

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DONALD TIMM, an individual; REED
WIMAN, an individual; and PERIPHERY
NEUROPHYSIOLOGY, a foreign limited
liability company,

Plaintiffs,

v.

SEATTLE CHILDREN'S HOSPITAL, a
Washington non-profit corporation; THE
ASSOCIATION OF CHRM AND
UNIVERSITY PHYSICIANS (d/b/a
CHILDREN'S UNIVERSITY MEDICAL
GROUP), a Washington non-profit
Corporation; JEFFREY G. OJEMANN, M.D.,
an individual; SAMUEL BROWD, M.D., an
individual; JONATHAN PERKINS, D.O., an
individual; THE ASSOCIATION OF
UNIVERSITY PHYSICIANS (d/b/a UW
PHYSICIANS), a Washington non-profit
corporation; PETER C. ESSELMAN, M.D.;
and GREGORY KINNEY, PH.D., an
individual

Defendants.

No. 2:24-cv-01570

DECLARATION OF JEFFREY B.
COOPERSMITH RE: FILING OF
NOTICE OF REMOVAL WITH STATE
COURT

I, Jeffrey B. Coopersmith, declare and state as follows:

1. I am a partner at Corr Cronin LLP and a member of the Washington State bar. I am
counsel for Defendants Seattle Children's Hospital and Jeffrey G. Ojemann, M.D.

DECLARATION OF JEFFREY B. COOPERSMITH - 1
(No. 2:24-cv-01570)

CORR CRONIN LLP
1015 Second Avenue, Floor 10
Seattle, Washington 98104-1001
Tel (206) 625-8600
Fax (206) 625-0900

1 (“SCH/Ojemann”) the above-captioned matter. I am over eighteen years of age, competent to
2 testify, and submit this declaration based upon my personal knowledge and my knowledge and
3 review of the records attached hereto.

4 2. I caused to be filed with the Clerk of the Superior Court of the State of Washington
5 for King County the Notice to Superior Court of Filing Notice of Removal, together with a copy
6 of the Notice of Removal (Dkt. No. 1) and attachments thereto (Dkt. Nos. 1-1 through 1-4), served
7 on counsel via email and via the King County Superior Court Efiling Portal.

8 3. Attached hereto are true and correct copies of the Certificate of E-Service and the
9 Notice to Superior Court of Filing Notice of Removal and attachments thereto.

10 I declare under penalty of perjury under the laws of the United States of America and the
11 State of Washington that the foregoing statements are true and correct.

12 DATED this 1st day of October, 2024, at Seattle, Washington

13
14 s/ Jeffrey B. Coopersmith
Jeffrey B. Coopersmith

The Honorable Maureen A. McKee

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

DONALD TIMM, an individual; REED
WIMAN, an individual; and PERIPHERY
NEUROPHYSIOLOGY, a foreign limited
liability company,

Plaintiffs,

v.

SEATTLE CHILDREN'S HOSPITAL, a
Washington non-profit corporation; THE
ASSOCIATION OF CHRMC AND
UNIVERSITY PHYSICIANS (d/b/a
CHILDREN'S UNIVERSITY MEDICAL
GROUP), a Washington non-profit
Corporation; JEFFREY G. OJEMANN, M.D.,
an individual; SAMUEL BROWD, M.D., an
individual; JONATHAN PERKINS, D.O., an
individual; THE ASSOCIATION OF
UNIVERSITY PHYSICIANS (d/b/a UW
PHYSICIANS), a Washington non-profit
corporation; PETER C. ESSELMAN, M.D.;
and GREGORY KINNEY, PH.D., an
individual

Defendants.

No. 24-2-19606-4 SEA

NOTICE TO SUPERIOR COURT OF
FILING OF NOTICE OF REMOVAL

[Clerk's Action Required]

TO: Clerk of the Court; and

TO: All Parties and Counsel of Record

NOTICE TO SUPERIOR COURT OF FILING
OF NOTICE OF REMOVAL - 1

CORR CRONIN LLP
1015 Second Avenue, Floor 10
Seattle, Washington 98104-1001
Tel (206) 625-8600
Fax (206) 625-0900

1 PLEASE TAKE NOTICE that the above-titled action has been removed by Defendants to
2 the United States District Court for the Western District of Washington at Seattle, pursuant to 28
3 U.S.C. § 1441(a) and (c)(1).

4 PLEASE TAKE FURTHER NOTICE that attached hereto is a true and correct copy of the
5 Notice of Removal. The original Notice of Removal has been filed with the aforementioned United
6 States District Court.

7 DATED this 1st day of October, 2024.

8 CORR CRONIN LLP

9
10 s/ Jeffrey B. Coopersmith

Jeffrey B. Coopersmith, WSBA No. 30954

Kevin C. Baumgardner, WSBA No. 14263

Maia R. Robbins, WSBA No. 54451

Mark T. Rutherford, WSBA No. 57519

1015 Second Avenue, Floor 10

Seattle, Washington 98104-1001

Ph: (206) 625-8600

jcoopersmith@corrchronin.com

kbaumgardner@corrchronin.com

mrobbins@corrchronin.com

15 mrutherford@corrchronin.com

16 *Attorneys for Defendants Seattle Children's*
17 *Hospital and Jeffrey G. Ojemann, M.D.*

CERTIFICATE OF SERVICE

The undersigned certifies as follows: I am employed at Corr Cronin LLP. On the date below, I caused a true and correct copy of the foregoing document to be served via the King County Superior Court Efiling portal pursuant to LGR 30, on:

Attorneys for Plaintiffs:

Brad J. Moore, WSBA No. 21802
 Andrew Ackley, WSBA No. 41752
 STRITMATTER KESSLER KOEHLER
 MOORE
 3600 15th Avenue West, Suite 300
 Seattle, WA 98119
 Ph: (206) 448-1777
brad@stritmatter.com;
andrew@stritmatter.com;
SarahR@stritmatter.com;

Eric L. Siegel, Admitted PHV
 James E. Miller, Admitted PHV
 ERIC SIEGEL LAW, PLLC
 888 17th Street, N.W., Suite 1200
 Washington, DC
jmiller@ericsiegellaw.com;
esiegel@ericsiegellaw.com;
aschroeder@ericsiegellaw.com

Attorneys for Defendants CUMG, Browd, Perkins, UWP, Esselman, and Kinney:

Bret S. Simmons, WSBA No. 25558
 Melissa Nelson, WSBA No. 17439
 SIMMONS SWEENEY FREIMUND SMITH
 TARDIF PLLC
 1223 Commercial Street
 Bellingham, WA 98225
 Ph: (360) 752-2000
bret@ssslawgroup.com;
melissa@ssslawgroup.com;
jessie@ssslawgroup.com

DATED at Seattle, Washington on 1st day of October, 2024.

s/ Megan Johnston

Megan Johnston, Legal Assistant
 Corr Cronin LLP
 1015 Second Avenue, 10th Floor
 Seattle, WA 98104
 Phone: (206) 625-8600
 Email: mjohnston@corrchronin.com

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DONALD TIMM, an individual; REED
WIMAN, an individual; and PERIPHERY
NEUROPHYSIOLOGY, a foreign limited
liability company,

Plaintiffs,

v.

SEATTLE CHILDREN'S HOSPITAL, a
Washington non-profit corporation; THE
ASSOCIATION OF CHRM AND
UNIVERSITY PHYSICIANS (d/b/a
CHILDREN'S UNIVERSITY MEDICAL
GROUP), a Washington non-profit
Corporation; JEFFREY G. OJEMANN, M.D.,
an individual; SAMUEL BROWD, M.D., an
individual; JONATHAN PERKINS, D.O., an
individual; THE ASSOCIATION OF
UNIVERSITY PHYSICIANS (d/b/a UW
PHYSICIANS), a Washington non-profit
corporation; PETER C. ESSELMAN, M.D.;
and GREGORY KINNEY, PH.D., an
individual

Defendants.

No.

NOTICE OF REMOVAL TO FEDERAL
COURT

[CLERK'S ACTION REQUIRED]

*[King Co. Superior Court
No. 24-2-19606-4 SEA]*

TO: Clerk, United States District Court for the Western District of Washington; and

TO: All parties and counsel of record

PLEASE TAKE NOTICE that Defendants, by and through their undersigned counsel of record), hereby remove Cause No. 24-2-19606-4 SEA, filed in the Superior Court of the State of Washington for the County of King, to the United States District Court for the Western District of Washington (Seattle Division), pursuant to 28 U.S.C. § 1441(a) and (c)(1). In support of this notice of removal, Defendants state as follows:

I. BACKGROUND

1. Plaintiffs commenced the above-titled action in the Superior Court of the State of Washington for the County of King, under Cause No. 24-2-19606-4 SEA (the “State Court Action”) on August 29, 2024. *See Exhibit A* (Complaint). Plaintiffs filed an Amended Complaint on September 20, 2024 (*Exhibit B*). Plaintiffs served Drs. Gregory Kinney and Jonathan Perkins on August 31, 2024; Plaintiffs served Dr. Browd on September 1, 2024; Plaintiffs served Dr. Peter C. Esselman, Children’s University Medical Group, and UW Physicians on September 3, 2024; and Plaintiffs served Defendant Seattle Children’s Hospital and Dr. Jeffrey G. Ojemann on September 3, 2024. All Defendants join in and consent to removal.

2. This Notice of Removal is timely because it is filed within 30 days of service of process on all Defendants. *See* 28 § U.S.C. 1446(b)(1) (permitting removal within 30 days from the defendant’s receipt of service of process).

3. Contemporaneously herewith, undersigned counsel is filing the documents required by LCR 101(b). Undersigned counsel will file the additional documents required by LCR 101(c) within 14 days of this Notice of Removal. Undersigned counsel will also promptly file this Notice of Removal with the clerk of the King County Superior Court, pursuant to 28 U.S.C. § 1446(d).

4. Venue is proper in the United States District Court of the Western District of Washington under 28 U.S.C. § 1441(a) because it is the district embracing King County, Washington, where the State Court Action is pending.

1 5. Initial assignment is proper to the Seattle Division under LCR 3(e)(1) because the
2 State Court Action was filed and is pending in King County, Washington.

3 **II. BASIS FOR JURISDICTION**

4 6. This Court has subject matter jurisdiction over this case because it involves a
5 federal question. Specifically, Count VI of the Complaint asserts a claim for retaliation in violation
6 of the federal False Claims Act under 31 U.S.C. § 3730(h). Congress has provided that the “district
7 courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or
8 treaties of the United States” and removal jurisdiction over the same. 28 U.S.C. §§ 1331 and
9 1441(a).

10 7. This Court has supplemental jurisdiction over Plaintiffs’ other claims in this case
11 under 28 U.S.C. §§ 1367(a). Plaintiffs’ claims for breach of contract, breach of the covenant of
12 good faith and fair dealing, tortious interference with contract, tortious interference with business
13 relationships, retaliation in violation of the Washington Healthcare Whistleblower Statute
14 (RCW § 43.70.075), and retaliation in violation of the Washington Medicaid Fraud False Claims
15 Act (RCW § 74.66.090(1)) are so related to claims in the action within this Court’s original
16 jurisdiction that they form part of the same case or controversy under Article III of the United
17 States Constitution. All such claims share a common nucleus of operative fact with Plaintiffs’
18 claim for retaliation in violation of the False Claims Act, 31 U.S.C. § 3730(h)(1). *Ho v. Russi*, 45
19 F.4th 1083, 1086 (9th Cir. 2022) (“A federal court normally *must* assert supplemental jurisdiction
20 when the combined state and federal claims form part of the same ‘case or controversy’ and share
21 a ‘common nucleus of operative fact.’”) (emphasis added).

22 **III. PROCEDURAL REQUIREMENTS**

23 8. As noted above, undersigned counsel is filing contemporaneously with this Notice
24 of Removal all documents required by LCR 101(b), and will file within 14 days all documents
25 required by LCR 101(c).

9. By filing this Notice of Removal, Defendants do not waive, and expressly reserve, all rights, defenses, and objections of any nature that they may have against Plaintiffs' claims, including but not limited to those in Fed. R. Civ. P. 12(b).

10. By submitting this Notice of Removal, Defendants do not admit any of the allegations in Plaintiffs' Complaint.

DATED this 30th day of September, 2024.

CORR CRONIN LLP

s/ Jeffrey B. Coopersmith
Jeffrey B. Coopersmith, WSBA No. 30954

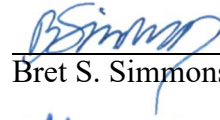
s/ Kevin C. Baumgardner
Kevin C. Baumgardner, WSBA No. 14263

s/ Maia R. Robbins
Maia R. Robbins, WSBA No. 54451

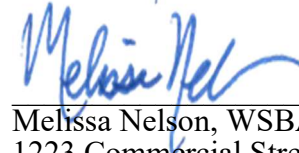
s/ Mark T. Rutherford
Mark T. Rutherford, WSBA No. 57519
1015 Second Avenue, Floor 10
Seattle, WA 98104-1001
Ph: (206) 625-8600
jcoopersmith@corrchronin.com
kbaumgardner@corrchronin.com
mrobbins@corrchronin.com
mrutherford@corrchronin.com

*Attorneys for Defendants Seattle Children's
Hospital and Jeffrey G. Ojemann, M.D.*

SIMMONS SWEENEY FREIMUND SMITH
TARDIF PLLC



Bret S. Simmons, WSBA No. 25558



Melissa Nelson, WSBA No. 17439

1223 Commercial Street

Bellingham, WA 98225

Ph: (360) 752-2000

bret@ssslawgroup.com

melissa@ssslawgroup.com

*Attorneys for Defendants CUMG, Browd,
Perkins, UWP, Esselman, and Kinney*

EXHIBIT A

ØŠÖÖ
GEG ÁCŦŦÁĜÁÆFKFÁUT
SŦ ŐŦŦUWŦVŦ
ÛMÚÒÙŦŦÁŦUWŦVÁŦŠÖÜS
ØZŠÖÖ
ÔŦŦŦŦÁĜ EGJÎ € Ě ÀŦŦE

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

DONALD TIMM, an individual; REED WIMAN, an individual; and PERIPHERY NEUROPHYSIOLOGY, a foreign limited liability company,

Plaintiffs,

VS.

NO.

COMPLAINT

SEATTLE CHILDREN'S HOSPITAL, a Washington non-profit corporation; CHILDREN'S UNIVERSITY MEDICAL GROUP, a Washington non-profit Corporation; JEFFREY G. OJEMANN, M.D., an individual; SAMUEL BROWD, M.D., an individual; JONATHAN PERKINS, M.D., an individual; UW PHYSICIANS, a Washington non-profit corporation; PETER C. ESSELMAN, M.D.; and GREGORY KINNEY, PH.D., an individual.

Defendants.

Plaintiffs, by and through their attorneys of record, STRITMATTER KESSLER

KOEHLER MOORE, and for causes of action against Defendants, allege as follows:

INTRODUCTION

1. Through their company, Plaintiff Periphery Neurophysiology, LLC, Plaintiffs Donald Timm and Reed Wiman contracted with Defendant Seattle Children’s Hospital (“SCH” or “the Hospital”) to provide intraoperative monitoring services to the Hospital. The Hospital

1 agreed to supply oversight providers for those services who were duly licensed and qualified.
2 Instead, through the University of Washington and its affiliates, the Hospital provided unlicensed
3 and unqualified oversight providers (who held Ph.D.'s instead of medical degrees). When
4 Plaintiffs reported their concerns regarding these unlicensed medical providers and identified
5 threats to patient safety as well as actual injuries to patients caused by the unlicensed providers,
6 the Hospital failed to investigate or address their concerns. Instead, the Hospital brought in
7 another vendor who was willing to work with the unlicensed providers, and decided not to renew
8 the contract held with Plaintiffs, despite being deemed best qualified and at the final stage of the
9 contract renewal process.

10 2. This is an action for damages and other relief resulting from these unlawful
11 actions.

12 **PARTIES**

13 3. Plaintiff Donald Timm ("Plaintiff Timm" or "Mr. Timm") is a resident of the
14 State of Washington. He is one of two members / owners of Periphery Neurophysiology, LLC.

15 4. Plaintiff Reed Wiman ("Plaintiff Wiman" or "Mr. Wiman") is a resident of the
16 State of Washington. He is one of two members / owners of Periphery Neurophysiology, LLC.

17 5. Plaintiff Periphery Neurophysiology, LLC ("Periphery" or "the Company") is a
18 limited liability company organized under the laws of the State of New Hampshire. Its principal
19 place of business is in the State of Washington. At all times relevant to this action, Periphery
20 provided contracted healthcare services for intraoperative neurophysiologic monitoring.

21 6. Defendant Seattle Children's Hospital ("SCH" or "the Hospital") is a non-profit
22 corporation organized under the laws of the State of Washington. Its principal place of business
23 is 4800 Sand Point Way, NE, Seattle, Washington, 98105.

1 7. Defendant Children’s University Medical Group (“CUMG”) is a non-profit
2 corporation organized under the laws of the State of Washington. Its principal place of business
3 is 4500 Sand Point Way, NE, Suite 100, Seattle, Washington, 98105. CUMG is a pediatric
4 group practice that was established to support the academic, research, and clinical missions of its
5 corporate members, University of Washington Medicine (“UW Medicine”) and SCH.

6 8. Jeffrey G. Ojemann, M.D., is a resident of the State of Washington. At all times
7 relevant to this action, he was either an employee or agent of CUMG.

8 9. Samuel Browd, M.D., is a resident of the State of Washington. At all times
9 relevant to this action, he was either an employee or agent of CUMG.

10 10. Jonathan Perkins, M.D., is a resident of the State of Washington. At all times
11 relevant to this action, he was either an employee or agent of CUMG.

12 11. UW Physicians (“UWP”) is a non-profit corporation organized under the laws of
13 the State of Washington. Its principal place of business is 701 Fifth Avenue, Suite 700, Seattle,
14 Washington 98104. UWP is the practice group for more than 2,600 providers and other
15 healthcare professionals associated with UW Medicine who care for patients throughout the
16 region. These providers teach at the University of Washington Medical School and practice
17 medicine at UW Medicine facilities, including SCH.

18 12. Peter C. Esselman, M.D., is a resident of the State of Washington. At all times
19 relevant to this action, Dr. Esselman was the Chair of the Department of Rehabilitation Medicine
20 at the University of Washington Medical Center. At all times relevant to this action, he was
21 employed by UWP.

22 13. Gregory Kinney, Ph.D. is a resident of the State of Washington. At all times
23 relevant to this action, Mr. Kinney was the Director of the Neuromonitoring Program with the
24

1 Department of Rehabilitation Medicine at the University of Washington. At all times relevant
2 to this action, he was employed by the University of Washington and by extension contracted to
3 provide services to SCH.

4 14. Pursuant to Rev. Code Wash. § 4.92.110, Plaintiffs have filed a notice of claim as
5 to the University of Washington, University of Washington Medicine, and the University of
6 Washington School of Medicine relating to the events alleged in this complaint. When the notice
7 period elapses, Plaintiffs intend to amend the complaint to add those parties as defendants.

8 **JURISDICTION AND VENUE**

9 15. Pursuant to Rev. Code Wash. § 2.08.010, this Court has subject matter
10 jurisdiction over Plaintiffs' claims because the amount in controversy exceeds three hundred
11 dollars, and subject matter jurisdiction has not been by law vested exclusively in another court.

12 16. This Court has subject matter jurisdiction over Plaintiffs' claims under the
13 (federal) False Claims Act, 31 U.S.C. § 3730(h), because state courts have concurrent
14 jurisdiction of claims brought under this section.

15 17. This Court has personal jurisdiction over all defendants because they all reside in
16 the State of Washington and/or conduct business in the State of Washington.

17 18. Pursuant to Rev. Code Wash. § 4.12.020, venue is proper because the incidents
18 giving rise to these causes of action occurred in King County, Washington.

19 **FACTUAL ALLEGATIONS**

20 19. Mr. Timm and Mr. Wiman formed Periphery on or around August 22, 2019 to
21 provide services for intraoperative neurophysiologic monitoring ("IONM").

22 20. Intraoperative neurophysiological monitoring refers to a group of procedures (or
23 studies) used to identify and monitor the neural pathways of a patient during surgery in order to
24

1 prevent damage to the nervous system. IONM is commonly used during certain neurological,
2 orthopedic, peripheral nerve, and vascular surgeries that have the potential to interfere with, and
3 cause permanent damage to, the integrity of a patient's neural structures. IONM allows for the
4 earliest possible intervention, and surgical adjustment, to avoid neurological damage occurring
5 during surgery.

6 21. Functionally, IONM involves the performance of two roles – those of a
7 neuromonitoring technologist and a supervising professional. The technologist, who is trained in
8 physiological monitoring techniques (such as electroencephalography, electromyography, and
9 evoked potentials, among others), performs the patient setup, runs the modalities, and acts as a
10 liaison for the interpreting professional. The supervising professional supervises the work of the
11 technologist, interprets the data in real time, communicates any significant findings to the
12 surgeon (directly or through the technologist), and provides diagnostic, therapeutic, and
13 interventional recommendations to the surgeon and other members of the patient care team, such
14 as the anesthesiologist. The supervising professional is also responsible for writing post-
15 operative reports regarding the IONM data collected during the procedure.

16 22. Mr. Timm and Mr. Wiman are both certified surgical neurophysiologists. Because
17 Mr. Timm and Mr. Wiman were both technologists, in providing services through their
18 company, they intended to contract with licensed professionals to provide the “professional” or
19 “oversight” component of IONM.

20 **Periphery Contracted with Seattle Children's Hospital**

21 23. After forming Periphery, Mr. Timm learned that SCH was urgently seeking a new
22 IONM contractor. Because Mr. Timm worked as a surgical neurophysiologist at the University
23 of Washington from 2013 to early 2018, he knew from his own experience that for a period of
24

1 nearly twenty-five years, SCH's contractor for IONM services had been the University of
2 Washington ("UW"), which provided both technologist and professional services through the
3 Division of Neurophysiology within its Department of Rehabilitation Medicine. The Director of
4 the program was Gregory Kinney, Ph.D. Mr. Timm was also aware that UW's IONM program
5 had long experienced staff attrition issues.

6 24. Mr. Timm reached out to SCH about its IONM services, and discussions began in
7 earnest in March 2020. Renelle Risley, SCH's Director of Business Operations for Surgical and
8 Periop Services, organized a meeting for Mr. Timm to discuss Periphery's proposal and clinical
9 aspects of IONM with Ms. Risley, Dr. Jeffrey Ojemann (Surgeon-In-Chief at SCH), and Dr.
10 Jennifer Bauer (Chief of Spine Surgery at SCH). During the meeting, SCH's physician
11 leadership openly vented their frustrations with the UW providers, complaining that UW did not
12 have enough people to handle its caseload and that, on occasion, the people it did have would fail
13 to show up for scheduled procedures. SCH's leaders indicated that it wanted to replace UW
14 completely as its vendor.

15 25. Discussions between Periphery and SCH continued throughout the summer of
16 2020 (slowed by the pandemic of COVID-19). Eventually, in contrast to what it told Mr. Timm
17 initially, SCH communicated that it only wanted to utilize Periphery as a "backup" or "overflow"
18 provider of technologist services for IONM. When its services were needed, Periphery would
19 work under the professional supervision of the UW.

20 26. Given the intensity of the internal dissatisfaction with UW during the March 2020
21 meeting, Mr. Timm was surprised that SCH wanted to retain UW as its contractor. But, for
22 Periphery, the arrangement would reduce the costs of contracting with professional oversight
23 providers as well as the liability risks associated with their services, which were often significant.

1 It would also give Periphery, a new company, time to scale up its services for other contracts.

2 Mr. Timm was also looking forward to working with his former colleagues at UW.

3 27. He indicated the arrangement would be fine with Periphery, but when SCH
4 reached out to Mr. Kinney and the Chair of the Department of Rehabilitation Medicine, Dr. Peter
5 Esselman, there was no immediate response. UW subsequently communicated that it did not
6 wish to provide oversight services for Periphery's technologists, which Ms. Risley passed along
7 to Mr. Timm. Neither SCH nor anyone at UW ever explained the basis of this decision to Mr.
8 Timm.

9 28. Nonetheless, Mr. Timm began the process of seeking oversight professionals who
10 would contract with Periphery so that it could obtain the contract with SCH.

11 29. On or around September 15, 2020, Periphery and SCH entered into a formal
12 "Clinical Services Agreement for Surgical Neuromonitoring Services" (hereinafter, "the
13 Agreement"). Under the Agreement, Periphery agreed to provide "overflow" IONM services to
14 SCH. Given UW's refusal to collaborate with Periphery, Periphery was anticipating that it
15 would be providing its own oversight services. But the Agreement nonetheless provided that
16 either Periphery or SCH could provide an "Interpreting Practitioner" for procedures in which
17 Periphery was providing the technologist.

18 30. In terms of qualifications, Section 2.1 of the Agreement stated:

19 Periphery shall be fully responsible for ensuring that each Periphery Provider
20 providing Services [defined to mean either a technologist or Interpreting
21 Practitioner] satisfies the following general qualifications at all times, in active
22 and good standing status, without any restrictions, conditions, suspensions,
23 reprimands, sanctions or disciplines (summarily or otherwise): (i) valid and
24 unrestricted licensure, accreditations, certifications, and clinical privileges
necessary to furnish the Services at Facilities; (ii) active enrollment and eligibility
with respect to all state and federal health care programs; and (iii) demonstrated
competency to provide the Services in a timely, safe, and effective manner in
accordance with applicable ethical and professional standards.

1 31. Additionally, Periphery’s providers were required to meet the “specific
2 qualifications” set out in Exhibit A of the Agreement. In Exhibit A, Paragraph 3(a) stated, “In
3 addition to ensuring the qualifications under Section 2.1,” Periphery technologists had to possess
4 certain credentials.

5 32. Paragraph 3(b) made clear that any Interpreting Practitioner “supplied by
6 Periphery or *Seattle Children’s* (employed or contracted) shall meet the *same* qualifications and
7 criteria” (both italics added). Thus, among other requirements, Interpreting Practitioners
8 (whether they were supplied by Periphery or SCH) had to meet the requirements of Section 2.1
9 of the Agreement, including its basic licensing and eligibility requirements “with respect to all
10 state and federal health care programs.”

11 33. Section 8.3 of the Agreement stated: “The parties intend this Agreement to
12 comply with all laws, regulations and requirements applicable to physicians, hospitals, Medicare
13 and Medicaid participants, and healthcare professionals in general.”

14 34. From the execution of the Agreement to the end of the year, Periphery provided
15 services for fifteen surgical procedures, a number that was consistent with projections between
16 the parties. With the exception of one procedure, in which SCH provided professional oversight
17 by one of its own neurologists, Periphery contracted for professional licensed oversight.¹

18 35. After years of difficulties with UW IONM services, SCH administrators and
19 surgeons alike were very pleased with Periphery’s services and reliability. In an email to Mr.
20 Timm, dated December 10, 2020, Dr. Ojemann wrote, “Our docs have been incredibly happy
21

22
23 ¹ Eventually, Mr. Timm was able to secure a contract with Real Time Neuromonitoring
24 Associates (“RTNA”), the leading national telemedicine practice group.

1 with the responsiveness and, more importantly, the quality.” In an email to Mr. Timm, dated
2 December 14, 2020, Ms. Risley stated, “You and your team have been a savior!!!”

3 36. Meanwhile, during this time, the IONM services provided by UW continued to be
4 plagued by staffing issues. In or around early January 2021, UW gave 180-day notice that it
5 intended to terminate its own contract with SCH to provide IONM services. Accordingly, UW
6 would only be providing such services until the summer of 2021.

7 37. On or about January 14, 2021, Ms. Risley contacted Mr. Timm and asked if
8 Periphery would expand its role so that it was providing all such IONM services. Mr. Timm
9 confirmed that Periphery would be willing to take on this larger role at the Hospital. Because a
10 provision of the Agreement precluded the parties from terminating the contract and entering into
11 an agreement that was “substantially the same” during the first year of the Agreement, Periphery
12 continued to provided services under the Agreement.

13 **Mr. Timm Discovered and Reported That UW’s Ph.D. Oversight Providers Were**
14 **Unlicensed and Providing Oversight Services in Violation of State Law.**

15 38. Shortly thereafter, on or about January 21, 2021, UW notified SCH that it could
16 not even cover the majority of its remaining scheduled IONM procedures during the 180-day
17 contract termination period, effectively defaulting on its contract with the Hospital. As a result,
18 many of the procedures scheduled for UW were transitioned to Periphery much sooner than
19 anticipated.

20 39. As cases were abruptly transitioned, a few SCH surgeons insisted on continuing
21 to use the UW providers for oversight rather than having Periphery contract with its oversight
22 providers. A group of otolaryngology surgeons, including Randall Bly, MD; John Dahl MD; and
23 Jonathan Perkins, DO (who was also Chief of the Vascular Anomalies Program), were
24 particularly adamant, as was Samuel Browd, MD, a neurosurgeon. Dr. Ojemann (Surgeon in

Chief, SCH) supported the position of these surgeons, expressing a desire to use the UW's oversight services for select surgical procedures in which having an onsite person was "ideal."

40. This position was bizarre. For one thing, to this point the UW providers had refused to collaborate with Periphery by providing oversight services. For another thing, although most of Periphery's oversight providers were not located in Seattle but provided their services remotely (which was entirely consistent with the industry standard), there was no benefit to having oversight providers "on site" for specific procedures.

41. The otolaryngology cases at issue were typically "single-modality" (electromyography) procedures, as compared with the "multi-modality" procedures used in surgeries involving complex brain tumors. Yet, the neurosurgery team at the Hospital had been using Periphery (and its contracted oversight providers) for complex brain tumors since the previous October (2020) without incident. Moreover, from his experience working at UW, Mr. Timm knew that the UW Ph.D.'s themselves did 90% of their own interpretation and supervision cases remotely and were typically only on-site for more complicated procedures.²

² More generally, it would typically be incomprehensible for a contractor to give 180-day notice of termination for an agreement, default on it less than two months later, and still be allowed to continue a business relationship in any capacity. The incident worried Mr. Timm, as it suggested the influence that physicians affiliated with UW, including the otolaryngologists, had over decisions at SCH.³ Although SCH treated pediatric patients, it was a "participating" hospital under Medicare since it treated patients qualifying as disabled under the federal healthcare system. In 2002, it billed more than \$35 million to Medicare. Additionally, it billed more than \$1.5 billion to Medicaid. The other hospitals for which the UW Ph.D.'s provided IONM oversight services, UWMC and Harborview, billed more than \$2 billion to Medicare and more than \$1.5 billion to Medicaid, collectively. Both SCH and UW utilized professional billing services through their respective physician groups, Defendant UWP and Defendant CUMG. Both groups have been the subject of allegations of Medicare fraud in the past.

1 42. Mr. Timm explained these points to SCH, but he encountered strong resistance,
2 and it became clear that the Hospital would require Periphery to provide technologist services
3 with the UW Ph.D.'s as the professional oversight providers.

4 43. When Mr. Timm initially agreed to have Periphery provide more than "overflow"
5 technologist services, he was not aware that in some cases the UW Ph.D.'s would be providing
6 this oversight. He became concerned about the risks of the arrangement since Periphery had
7 agreed to provide technologist services subject to *lawful* oversight; he was also concerned about
8 potential liability to Periphery in this arrangement.

9 44. Mr. Timm had a sense of the regulatory and compliance aspects of the
10 professional oversight function since he had looked into them when he was negotiating with
11 RTNA in the fall of 2020. Now, as a matter of prudence, he felt that he should make further
12 inquiries and verify that the UW Ph.D.'s had the necessary qualifications and credentials to
13 provide professional oversight to the technologists in his own company.

14 45. As he began to discuss the issue with industry colleagues and did his own
15 research, he came to realize something very disturbing. He discovered that the UW Ph.D.'s were
16 not authorized by the State of Washington to provide the services they were providing and, in
17 fact, were providing them in violation of state law.

18 46. Washington state law states that "[n]o person may practice or represent himself or
19 herself as practicing medicine without first having a valid license to do so." Wash. Rev. Code §
20 18.71.021. State regulations provide for such licensing through the Washington Medical
21 Commission. Wash. Admin. Code § 246-919-010 *et seq.* Washington law states that a person is
22 engaged in the practice of medicine if he or she "[o]ffers or undertakes to diagnose, cure, advise,
23 or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition,
24

1 physical or mental, real or imaginary, by any means of instrumentality.” Rev. Code Wash. §
2 18.71.011.

3 47. Oversight providers are engaged in the practice of medicine because they make
4 autonomous clinical decisions to diagnose injuries to and ailments in a patient’s neural structure
5 occasioned by surgery, and make treatment recommendations to avoid, address, and cure those
6 injuries and ailments by advising a surgeon and other licensed physicians. In simplest terms,
7 they diagnose an anesthetized patient’s neurological status during surgery and advise surgical
8 staff based on those diagnostic interpretations. They also independently author clinical reports
9 on their intraoperative findings and oversee technologists.

10 48. The interpretation of IONM studies is analogous to radiology, in which licensed
11 physicians (typically radiologists) diagnose and make treatment recommendations to other
12 physicians by interpreting radiological studies performed by non-physician technical personnel.
13 One critical difference, however, is that interpretation of IONM diagnostic studies occurs in real-
14 time during surgery.

15 49. The conclusion that the interpretation and supervision of IONM is the practice of
16 medicine is consistent with the opinions of other regulatory and professional bodies. The
17 American Medical Association (“AMA”) has determined that the “supervision and interpretation
18 of intraoperative neurophysiologic monitoring constitutes the practice of medicine.” AMA
19 Policy H-410.957. Although the AMA policy states that this practice “can be delegated to non-
20 physician personnel who are under the direct or online real time supervision of the operating
21 surgeon or another physician trained in, or who has demonstrated competence in,
22 neurophysiologic techniques and is available to interpret the studies and advise the surgeon
23 during the surgical procedures,” the UW Ph.D.’s were *never* under the supervision of the SCH
24

operating surgeon or of any physician at UW (whether trained or competent in neurophysiologic techniques) while they provided oversight services.

50. Additionally, further substantiating that the UW Ph.D.'s were engaged in the "practice of medicine," the FDA had approved the devices used by the technologists at Periphery (and SCH) as Class II devices with a "prescription use" designation, meaning that they could only be used under the supervision of a licensed provider. *See* 21 C.F.R. § 801.109 (defining "prescription device" as a "[a] device which, because of any potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use is not safe except under the supervision of a practitioner licensed by law to direct the use of such device").

51. Although they were engaged in the practice of medicine, none of the UW Ph.D.'s held licenses to practice medicine in the State of Washington.

52. The State of Washington does provide numerous "exemptions" for healthcare activities whose roles otherwise fall into the broad definition of practicing medicine. This includes dentists, chiropractors, podiatrists, nurses, physician assistants, medical students, and medical residents, among others. Rev. Code. Wash. § 18.71.030. The State authorizes and carefully defines the "scope of practice" for these healthcare activities.

53. In the State of Washington, as in a number of other states, the only other healthcare professional for whom the supervision and interpretation of IONM is within the scope of practice is a licensed audiologist. *See* Wash. Admin. Code § 246-828-095. The State has not provided a scope of practice for doctorates of philosophy (Ph.D.'s) to provide the professional component of intraoperative monitoring.

54. For years, Mr. Timm had trusted that the UW would be complying with all state and federal laws and regulatory requirements. He had known that the UW Ph.D.'s were not

1 licensed as medical doctors but had been under the impression that they still had a lawful scope
2 of practice under Washington laws and regulations, which it now became apparent they did not.

3 55. He had also been under the impression that the UW Ph.D.'s were "board
4 certified" and that such certification provided the necessary authority or permission for UW
5 Ph.D.'s to provide professional oversight. But Mr. Timm now came to understand that
6 certifications, even if the Ph.D.'s had them – were not a substitute for a state license or defined
7 scope of practice.

8 56. The American Society of Neurophysiological Monitoring ("ASNM") is the
9 largest worldwide organization dedicated to the scientifically-based advancement of IONM. Its
10 *Guidelines for Supervising Professionals* restates the AMA Policy that that the supervision,
11 interpretation, and intervention in IONM constitutes the practice of medicine, and that
12 supervising professionals must comply with state law concerning scope of practice and licensure.
13 The Guidelines provide that "board certification" is also necessary, and should be secured within
14 seven years of beginning practice. Board certification for supervising professionals is provided
15 through the American Board of Neurophysiological Monitoring ("ABNM"), which awards the
16 Diplomate of ABNM (or the "DABNM").

17 57. Even if this board certification was a substitute for a proper license and scope of
18 practice, when Mr. Timm attempted to confirm that the U.W. Ph.D. providers had this
19 certification, he discovered that none of them had an active certification.

20 58. For Mr. Timm, this glaring lack of qualifications raised an additional concern.
21 Mr. Timm knew the UW Ph.D.'s were providing services at hospitals that did a significant
22 amount of billing to government payors such as Medicare and Medicaid (known as "Apple
23
24

Health,” in the State of Washington).³ However, since the UW Ph.D.’s were unlicensed and otherwise lacked a scope of practice, their services were not eligible for reimbursement under the requirements of the Centers for Medicare and Medicaid Services (“CMS”).

59. If IONM services are not furnished in accordance with CMS regulations and local coverage determinations (“LCD’s”), then CMS does not consider the service “medically necessary” and does not reimburse for the service. *See* 42 C.F.R. § 410.32; *see also* 42 C.F.R. § 482.11(c) (noting that a participating hospital “must assure that personnel are licensed or meet other applicable standards that are required by State or local laws”).

60. Under relevant LCD’s for the State of Washington going back twenty years, IONM oversight services must be performed by a licensed physician. *See, e.g.*, LCD L14726 (Sensory Evoked Potentials and Intraop Neurophysiology Monitoring). Additionally, because many private payors look to CMS regulations in determining their own reimbursement policies, it was clear to Mr. Timm that any billing for these services to private payors was likely unjustified and fraudulent, as well.

³ Although SCH treated pediatric patients, it was a “participating” hospital under Medicare since it treated patients qualifying as disabled under the federal healthcare system. In 2002, it billed more than \$35 million to Medicare. Additionally, it billed more than \$1.5 billion to Medicaid. The other hospitals for which the UW Ph.D.’s provided IONM oversight services, UWMC and Harborview, billed more than \$2 billion to Medicare and more than \$1.5 billion to Medicaid, collectively. Both SCH and UW utilized professional billing services through their respective physician groups, Defendant UWP and Defendant CUMG. Both groups have been the subject of allegations of Medicare fraud in the past.

61. In sum, the UW Ph.D.'s lacked necessary licenses and scopes of practice under state law and regulations; federal law and regulations; and as defined through policies of CMS and private insurance companies relating to billing practices.⁴

62. It appeared to Mr. Timm that the UW Ph.D.'s had been internally "qualified" as though they were attending physicians. Hospital administrators had indicated to Mr. Timm that the Ph.D.'s were "credentialed" through the Medical Staff Office (even though Hospital bylaws state that any member of the Medical Staff must be "legally licensed to practice in the State of Washington"). They were also often characterized as "physicians."

63. Within the UW electronic medical records system, for instance, they were classified as "attending physicians." On the surgical whiteboard in the operating room, they were listed as "SCM [Spinal Cord Monitoring]-MD." Even when they received their parking passes, the letter stated, "Dear Physician."

64. Over the course of the coming months in 2021, Mr. Timm, on behalf of himself, Mr. Wiman and Periphery, conveyed his concerns regarding the lack of qualifications of the UW Ph.D.'s to SCH surgeons, administrators at the SCH, including the operating room director and clinical strategic sourcing manager, and to the Surgeon-in-Chief (who became the Chief Medical Officer) of the Hospital.

65. Despite Mr. Timm's disclosures, SCH surgeons and physician leadership insisted on continuing to use oversight providers who were not properly authorized under state law to provide the services they were providing.

⁴ Additionally, two of the Ph.D.'s in the program, Robert Holdefer and Vicente Martinez, held Ph.D.'s in psychology and biopsychology, respectively, research-oriented degrees far removed from the field of surgical neurophysiology.

1 66. Thus, on February 2, 2021, Mr. Timm sent an email to Joanna Garrison, Manager
2 of Surgery Coordination (copying Ms. Risley), stating that Periphery was willing to cover an
3 upcoming procedure that UW technologists were no longer able to staff, but he wanted to use a
4 licensed oversight provider from Periphery (i.e., a neurologist contracted through RTNA). He
5 sent an email to the surgeon, Dr. Jonathan Perkins, stating the same thing. Knowing the
6 preference of Dr. Perkins for the UW Ph.D.'s, and attempting to accommodate him, Mr. Timm
7 offered to allow the UW Ph.D. on the case (Mr. Kinney) to join the procedure on-site but not
8 have him interpret, oversee, or author the resulting report.⁵ Dr. Perkins responded simply by
9 stating that Mr. Kinney was scheduled on the case and asking Mr. Timm to coordinate with Mr.
10 Kinney.

11 67. On February 4, 2021, Mr. Timm discussed the licensing and qualification issues
12 with Dr. Perkins in person, but Dr. Perkins was adamant that the procedure would not be
13 possible without the UW Ph.D.'s as they offered on-site interpretation. During the conversation,
14 Dr. Perkins become visibly frustrated and angry with the recent transition of IONM services
15 from the UW providers.

16 68. Although Mr. Timm and other Periphery providers, including Mr. Wiman, were
17 concerned with the medicolegal risk of having the Ph.D.'s provide oversight, Periphery tried to
18 be sympathetic to the impact that the abrupt departure of UW's IONM service was having on
19 surgeons accustomed to working with the UW oversight providers, as well as to the difficulty
20 everyone was experiencing transitioning so many cases in such a short period of time.

21
22
23 ⁵ Mr. Timm thought the UW Ph.D.'s could serve in the role of an "advanced"
24 technologist, given that they had graduate level coursework in anatomy and physiology, which
most technologists did not.

69. Mr. Timm and Mr. Wiman did their best to mitigate the issues in the short-term so that they would not impact patient care. They decided that Mr. Timm, one of Periphery's most experienced technologists, would handle the first procedures involving Ph.D. oversight, in hopes of managing and addressing any barriers to the delivery of service. Mr. Timm and Mr. Wiman agreed that the best path forward was to continue to educate the leaders at SCH on the issues pertaining to the oversight of the Ph.D.'s, while continuing to deliver excellent IONM services.

70. To that end, during discussions of the expanded services, Mr. Timm provided Sue Teodecki, SCH's Clinical Strategic Sourcing Manager, a highlighted copy of the ASNM *Guidelines for Supervising Professionals*, which referenced AMA Policy H-410.957 and clearly defined the interpretation and supervision of IONM as being the practice of medicine, and stated that oversight providers should comply with state law regarding scope of practice and licensure.

Periphery Staff Witnessed and Reported Patient Safety Concerns Relating to Professional Oversight Services Provided By the UW Ph.D.'s.

71. As Periphery began to work with the UW oversight providers, it became clear that the issue of licensing and qualifications was more than an abstract legal or regulatory concern. Periphery staff witnessed multiple incidents in which the conduct or actions of the UW Ph.D.'s threatened the safety of pediatric patients at SCH.⁶

72. On or about February 2, 2021, Mr. Timm contacted Mr. Kinney to coordinate a care plan for the procedure (referenced above) with Dr. Perkins scheduled for February 4. In his response, Mr. Kinney confused two (critical) branches of the facial nerve, the temporal and zygomatic branches, believing they were the same thing.

⁶ SCH physicians also complained with some regularity that pediatric patients had been injured during surgeries in which the UW Ph.D.'s role was involved.

1 73. Prior to the procedure, Mr. Timm was able to clarify with Dr. Perkins that the
2 mass was primarily impacting the temporal branch and thus recommended which facial muscles
3 should be mapped for the procedure, thus avoiding any impact to patient care. The incident with
4 Mr. Kinney, however, troubled Mr. Timm, as did the faith that the Otolaryngology surgeons
5 seemed to have in the UW oversight providers.

6 74. On or about March 1, 2021, Mr. Timm reached out to Mr. Kinney regarding a
7 procedure (the resection of a mass) scheduled for March 5 with Dr. Dahl. The next day, Mr.
8 Kinney provided a care plan that suggested the spinal accessory nerve (“CN XI”) was involved,
9 even though the hypoglossal nerve (“CN XII”) was actually near the mass. On the day of the
10 procedure, Mr. Timm discussed the issue with Dr. Dahl, who agreed that the spinal accessory
11 nerve was nowhere near the mass.

12 75. Additionally, on the day of the procedure, Vicente Martinez, the assigned UW
13 oversight provider, did not come into the operating room until 8 a.m., even though the procedure
14 was scheduled to begin at 7:30 a.m. Once the procedure was underway, Mr. Martinez informed
15 Mr. Timm that he had to go to University of Washington Medical Center for a procedure and
16 abruptly left the room at 8:31 a.m. When Mr. Timm questioned that decision, which left Mr.
17 Timm without proper oversight, it became clear that Mr. Martinez had no plans to transfer his
18 duties to another oversight provider. Thus, Mr. Timm was forced to monitor the rest of the
19 procedure alone without oversight. Fortunately, there was no impact to the patient, and the
20 procedure was completed without complication. Afterwards, Mr. Kinney attempted to blame
21 this incident on Mr. Timm, asking him to remind Mr. Kinney one day before procedures on
22 which a UW Ph.D. would be providing oversight, ignoring the fact that Mr. Kinney and Mr.
23 Timm had exchanged emails regarding the procedure in the days leading up to it.

1 76. On or about March 7, 2021, Mr. Timm emailed his concerns about these incidents
2 to Ms. Risley. At the outset, he noted: “As we’ve discussed, the UW oversight team is non-
3 clinical PhD providers without neurophysiology credentials (DABNM, CNIM), so there is
4 considerable risk for SCH to continue utilizing their services without an appropriately licensed
5 provider as the attending.” Mr. Timm noted that in the three procedures where the UW Ph.D.’s
6 had provided oversight to Periphery technologists, two had involved “questionable care plans.”
7 He then documented the incidents surrounding the February 4 and March 5, 2021 procedures.

8 77. He added, “I know the topic of UW oversight is sensitive for a few of the
9 surgeons at SCH, but I believe this is a good time to evaluate their practices and determine if [the
10 Ph.D.’s] are truly bringing adequate patient care to Seattle Children's Hospital.”

11 78. On or about March 8, 2021, Ms. Risley forwarded Mr. Timm’s concerns to
12 Rachel VanDeMark, SCH’s Director of Surgical Quality Programs. (Ms. VanDeMark was in
13 charge of the surgical facility’s Quality Improvement (“QI”) program.) Ms. Risley wrote, “Don
14 has great ideas to improve provider awareness of neuromonitoring and improve our situation. As
15 we stand now, we are primed for serious patient harm.”

16 79. A few weeks later, Ms. VanDeMark informed Mr. Timm that she had shared his
17 concerns with internal colleagues, and she would follow up with him. Although she thought a
18 video conference would be scheduled, the conference was never held (or, if it was, Mr. Timm
19 was not invited to participate). Instead, on or about March 9, 2021, Dr. Ojemann called Mr.
20 Timm to discuss his concerns.

21 80. Neither Dr. Ojemann nor anyone at SCH, however, provided Mr. Timm a
22 response to the extensive report he had made regarding the licensing and conduct of the UW
23 Ph.D.’s, and the related patient-care issues.
24

1 81. Despite Mr. Timm's repeated requests to discuss the issues further, SCH would
2 not provide a substantive response to these issues for a period of fifteen months.

3 82. As the Hospital delayed in addressing Mr. Timm's concerns, the UW oversight
4 providers continued their practice of leaving the operating room during procedures. Following a
5 similar incident in which another UW Ph.D., Robert Holdefer, left the operating room during a
6 procedure to do some other work, Mr. Wiman informed him that he needed to remain in the
7 operating room to provide oversight.

8 83. On or about April 12, 2021, Mr. Kinney wrote an email to Mr. Timm complaining
9 about the incident. In the email, he acknowledged that Periphery had "specific standards to
10 maintain" but stated that because of its ongoing contract issues with SCH, his group was not
11 always being paid for its oversight services, and even when it was, his group could not "commit
12 to being on site for the entire case in many instances since we frequently will have other
13 obligations, including cases within our system to attend as well as meetings and teaching, etc."
14 (Mr. Kinney also referred to the fact that Dr. Ojemann wanted the UW Group to provide
15 oversight for all cases at SCH and noted that UW may be billing for these procedures.)

16 84. Mr. Timm was astounded that the Director of the UW program would take the
17 position that UW Ph.D.'s did not have to be physically present for the duration of the procedures
18 in which they were providing oversight since both the AMA Policy, and CMS and ASNM
19 Guidelines require "direct" and "real time" supervision for the duration of a surgical procedure.

20 85. Mr. Timm forwarded the email to Ms. Risley and Ms. VanDeMark. He wrote,
21 "Please include this with my initial concern as it directly relates to the UW PhDs." He noted, "I
22 cannot have my team exposed without oversight and Greg doesn't appear interested in providing
23 the actual oversight component." Mr. Timm also stated:

1 At the end of the day, it's the patient who loses when oversight is unwilling to
2 cover a procedure based on remuneration/ongoing contract discussions. I cannot
3 speak to Dr. Ojemann's purported goal of bringing the PhD team back as
4 oversight for interpretation of all cases, but given my experience in collaborating
with the UW so far it would be unwise. There has been almost no pre-planning of
procedures that are being considered complex and what is practiced often has no
evidence basis in peer-reviewed literature.

5 86. He added, "I look forward to addressing this topic in further detail." But the
6 leadership of SCH offered no response to these concerns.

7 87. While the hospital refused to act, patient care issues involving the UW Ph.D.'s
8 continued, in some cases resulting in injuries to patients, which were confirmed by SCH
9 physicians. For example, on or about April 26, 2021, Mr. Timm was present when Dr. Elaine
10 Tsao, a pediatric rehabilitation specialist, visited the operating room and asked Dr. Samuel
11 Browd, a neurosurgeon, why patients undergoing a Selective Dorsal Rhizotomy ("SDR"), a
12 procedure that reduces spasticity in the legs of children with cerebral palsy, were experiencing
13 postoperative bladder dysfunction. Dr. Browd directed the question to Mr. Kinney, who stated
14 there was nothing he could do from the IONM standpoint to reduce the incidence of this
15 problem, an answer that Mr. Timm knew to be wrong.

16 88. All peer-reviewed publications on SDR procedures (including publications
17 written by the UW Ph.D.'s) noted that the nerve roots responsible for bowel, bladder, and sexual
18 function should be kept intact whenever they could be identified through electromyography
19 ("EMG") testing, a technique of IONM. After Mr. Kinney left the operating room, Mr. Timm
20 described this methodology to Dr. Browd. The following day, Mr. Timm wrote a follow-up
21 email to Dr. Browd, attaching peer-reviewed publications and information on advanced
22 monitoring modalities that confirmed the points he had made.

89. Despite this state of medical knowledge, on multiple occasions, Periphery technologists witnessed Mr. Kinney make incorrect interpretations of EMG studies that led him to recommend to Dr. Browd that the vital nerve roots be “cut” (i.e., partially sectioned), impairing bladder and other functions.

90. When Mr. Timm reported this recurring issue to Ms. Risley, she encouraged Mr. Timm to discuss with Dr. Browd regarding the use of licensed professionals for these procedures. Before approaching Dr. Browd, Mr. Timm spoke with Gene Balzer, the CEO of RTNA (Periphery’s primary physician oversight contractor), who offered the possibility of having one of RTNA’s neurologists (who lived fifteen minutes away from SCH) provide on-site oversight services for these procedures. Mr. Balzer also suggested a collaborative multi-center research project to share methodologies and data to improve outcomes. When Mr. Timm approached Dr. Browd with these ideas, he curtly responded, “Not unless Greg Kinney gets hit by a bus.”

91. Surgeons in leadership positions at SCH were aware of the post-operative SDR injuries. On or about June 10, 2021, Dr. Suzanne Yandow, an orthopedic surgeon and the Surgical Director for the Operating Room, wrote in an email, “We are seeing issues with post op bladder dysfunction especially in SDVR [Selective Dorsal Ventral Rhizotomy] patients.” Dr. Ojemann and Surgeon-in-Chief, Andre Dick MD were copied on the email.⁷

92. Months later, in October 2021, during an SDR procedure, Dr. Tsao mentioned that there continued to be multiple incidents of bladder impairment following SDR procedures at SCH. Other than Dr. Tsao, no one shared these negative outcomes with Periphery.

⁷ In April 2021, Dr. Ojemann had become the Interim Chief Medical Officer of SCH.

1 93. The licensing and quality-of-care issues posed by the UW Ph.D. providers
2 continued and remained unaddressed by SCH, despite Mr. Timm's repeated attempts to address
3 these issues and to bring them to the attention of administrators, physicians, and hospital leaders.
4 Mr. Timm periodically raised these issues during meetings with administrators, but he received
5 no follow up to his reports.

6 94. Even when Periphery tried to assist the UW Ph.D.'s in coordinating and providing
7 oversight services, the UW Ph.D.'s refused. After the incident with Mr. Martinez and after Mr.
8 Kinney stated that remote access could mitigate situations where the Ph.D.'s were unable to stay
9 on-site for the duration of a surgical procedure, Periphery provided the Ph.D.'s a secure way to
10 connect remotely to IONM procedures and authorized surgery schedule access in April of 2021.

11 95. Nonetheless, UW Ph.D.'s rarely took advantage of the technology. Instead, the
12 Ph.D. providers continued to arrive late and leave before the end of procedures involving IONM
13 services, and often neglected to share a monitoring plan in a timely fashion, leaving technologists
14 scrambling to accommodate the diverse needs of patients. This resulted in delayed patient care,
15 and at times frustrated the surgeons, who became impatient waiting for the Ph.D.'s to arrive. On
16 multiple occasions, surgeons asked Periphery staff to proceed without oversight.

17 96. Throughout the summer of 2021, SCH and UW were negotiating a new
18 agreement with UW for the UW Ph.D.'s to continue to provide oversight services for select
19 procedures. As part of that process, SCH and UW discussed the qualifications of the UW
20 Ph.D.'s to provide oversight services. Dr. Esselman communicated to SCH that the Ph.D.'s were
21 authorized to provide oversight services by virtue of the fact that they were supervised by other
22 faculty in the medical school. This position was unjustified, unlawful, and false.

1 97. Despite having its own regulatory expertise and being responsible for conducting
2 its own inquiry and verification of the licensure, qualifications, and credentialing of healthcare
3 providers at its own hospital, SCH essentially adopted Dr. Esselman's position as its own.

4 98. Additionally, around this time, Mr. Kinney approached Mr. Timm and asked to
5 speak with him. During the conversation, Mr. Kinney stated that he had never obtained any form
6 of certification because his Department Chair (Dr. Esselman) did not require it. Mr. Kinney
7 mentioned that he had considered obtaining an Audiology degree, which clearly reflected his
8 awareness of his lack of licensing and scope of practice under state law. However, he had not
9 pursued it because he had children. Mr. Kinney actually wondered if Periphery was hiring, but
10 Mr. Timm stated clearly, "I'm not going to hire anybody who doesn't have credentials." Given
11 Mr. Kinney's relative candor on the subject, Mr. Timm continued to expect some sort of
12 resolution from the Hospital on the question of Ph.D. qualifications and/or credentials, but none
13 was forthcoming.

14 99. Although the licensing and patient-care issues relating to the UW Ph.D.'s were
15 significant, the surgeries involving oversight with the UW Ph.D. team was only a small
16 percentage (approximately 10%) of the procedures on which Periphery provided IONM services.
17 By and large, SCH's surgeons were supportive and complimentary of Periphery's work.

18 100. In or about October 2021, Mr. Timm attended a meeting with Ms. Risley and
19 Kayla Reece, another Hospital administrator. Ms. Risley said that SCH was interested in
20 extending its contract with Periphery for a five-year period. (The term of the original
21 Agreement, which was twenty-four months, was set to expire on September 15, 2022.)

22 101. Mr. Timm was pleased that the Hospital wanted to extend the Agreement.
23 However, he was troubled by the lack of a response from the Hospital regarding the concerns he
24

1 had expressed about the UW Ph.D.'s. If anything, the situation with the UW Ph.D.'s seemed to
2 be getting worse. Mr. Timm said that recently he had noticed an uptick in cases in which the
3 UW Ph.D.'s were scheduled to provide IONM oversight, including in cases outside of their usual
4 otolaryngology (and rhizotomy procedures), which had created conflicts between Periphery and
5 the UW Ph.D.'s. Ms. Risley and Ms. Reece confirmed that SCH had renewed its contract with
6 UW earlier that fall but assured Mr. Timm that the Hospital was looking into his concerns.

7 102. A few weeks after the meeting, on or about November 16, 2021, an
8 otolaryngology scheduler made an "urgent" request for Periphery to provide a technologist for a
9 procedure, although the request was made three days in advance. When the technologist arrived
10 for the procedure, it became apparent that given the location of the mass involved, the IONM
11 services at issue would be of little value and, as it turned out, the anesthetic being used would
12 render the services useless anyway. When the anesthesiologist offered to use a different
13 anesthetic, the surgeon (Dr. Dahl) simply canceled the IONM services even though the Periphery
14 technologist had already gone through the set-up process and begun monitoring. Dr. Dahl stated
15 that he had not ordered monitoring in the first place. The UW Ph.D. oversight provider, who
16 arrived five minutes after the start of the procedure, could have caught any of these issues before
17 the procedure but had failed to do any pre-planning.

18 103. Pursuant to the Agreement, Periphery was allowed to bill the Hospital for the
19 procedure. The UW Ph.D. providers would also be able to seek reimbursement for their
20 services.

21 104. In an email to Ms. Reece and Ms. Risley, dated November 19, 2021, he reported
22 the incident and wrote:

23 It is my impression that we are not being utilized to help the patients, but rather
24 [to] support a tangential relationship between the OTO [Otolaryngology] group

1 and UW's neurophysiologists. If the surgeon did not request neuromonitoring
2 with UW for this procedure, it is entirely possible there is a standing order to add
3 them for all procedures falling within a certain category. From my perspective
4 there doesn't appear to be a plan to verify efficacy at the individual patient level,
5 which makes the overall utility of IOM questionable. If UW had viewed the data
6 and made a plan with the surgeon ahead of time, IOM could have been canceled.

7 As you know, I am deeply invested in this field and seek to educate and empower
8 the surgeons and staff at SCH regarding IOM and its utility, as well as its
9 limitations. I understand that mistakes in scheduling can occur, but this instance
10 had multiple layers of confirmation, including the day of. I'm putting myself and
11 company in a precarious place by bringing these issues to the forefront, but I
12 cannot with good conscience avert my eyes in favor of increased case volumes
13 and revenue.

14 105. As he pursued renewing the Agreement with SCH, the incidents involving the
15 UW Ph.D.'s continued to trouble Mr. Timm. On the basis of SCH's representations that it was
16 continuing to "investigate" the concerns that Mr. Timm had raised, Periphery participated in the
17 renewal negotiation with SCH in good faith and assumed that the Hospital would address Mr.
18 Timm's concerns as part of the contract renewal process.

19 106. The parties began to exchange drafts for a five-year contract renewal.

20 **SCH Withdrew From Contract Renewal Discussions After Periphery Asserted That the**
21 **Hospital Breached the Agreement By Failing to Provide Qualified Oversight Professionals**
22 **and to Address the Quality Improvement Issues That Mr. Timm Raised.**

23 107. By late spring 2022, the parties had worked through a number of issues pertaining
24 to the contract renewal. However, the oversight provided by the UW's Ph.D.'s was becoming
increasingly problematic. With SCH continuing its inaction and silence regarding the concerns
that Mr. Timm had raised, patient care continued to suffer.

108. A particularly troubling – and yet not unusual – incident involving the UW
Ph.D.'s occurred on or about May 23, 2022. Mr. Kinney arrived nearly an hour late to a
scheduled procedure, missing all pre-procedure discussions between the healthcare providers.
During one of the pre-procedure safety checks, Dr. Browd noticed that Mr. Kinney was not

1 present, and a circulating nurse stated that the procedure should not begin until Mr. Kinney
2 arrived. Despite the fact that Dr. Browd was one of the physicians who preferred to use UW
3 Ph.D.'s for oversight services, he became frustrated. He claimed that it was Mr. Wiman's
4 responsibility to ensure that Mr. Kinney was present for the procedure and blamed Mr. Wiman
5 for not telling him (Dr. Browd) that Mr. Kinney was not. Mr. Kinney finally arrived – and then
6 left the room again.

7 109. Mr. Timm provided a detailed report on the incident a few days later. Among
8 other things, he referred to billing guidelines for Medicare and Medicaid, noting, "IONM CMS
9 guidelines state . . . that continuous oversight is required once IONM commences. Greg cannot
10 leave the room once we start monitoring or needs to remotely connect in the event that our data
11 shows nerve root irritation on exposure that we must relay to the surgeon."

12 110. In late May 2022, Mr. Timm requested a meeting with SCH to discuss this
13 incident, and to review the latest proposed draft of the renewal contract between the parties to
14 ensure there were no barriers to finalizing the agreement.

15 111. Before the scheduled meeting, yet another incident occurred. On or about June 6,
16 2022, Mr. Kinney tried to perform on-site interpretations for two surgeries occurring at the same
17 time! Even though Mr. Kinney had known of the scheduling conflict weeks in advance, he had
18 failed to arrange for adequate coverage. During the procedures, he effectively abandoned
19 oversight of one of the procedures for the other. When the Periphery technologists performing
20 the IONM services in the two procedures (Mr. Wiman and John Scarafiotti) raised concerns with
21 Mr. Kinney, he was dismissive of their concerns and continued to "oversee" both procedures,
22 with the support of the surgeons (Dr. Browd and Dr. Bly). Mr. Kinney had known these
23
24

procedures overlapped weeks in advance and failed to ensure adequate patient care and safety by either scheduling another oversight provider or connecting to the procedures remotely.⁸

112. During the meeting the next day, on or about June 7, 2022, administrators for SCH confirmed that there were no remaining obstacles to renewing the contract with Periphery. However, in light of the recent incidents, particularly the one involving Mr. Kinney the previous day, Mr. Timm informed the SCH administrators present that SCH was not satisfying the terms of the existing Agreement (by providing qualified oversight providers), and simply had not addressed the quality-of-care concerns submitted to its internal Quality Improvement (“QI”) program fifteen months earlier (in or about March of 2021).

113. Ms. Risley encouraged Mr. Timm to invoke the contractual breach clause of the Agreement in the stated hope that it would cause SCH executive leadership to (finally) take Periphery’s concerns regarding the unlicensed and uncredentialed Ph.D.’s seriously. (At her request, Mr. Timm also forwarded to Ms. Risley documentation supporting the concerns he had raised.)

114. Accordingly, on or about June 14, 2022, under Section 6.3 of the Agreement, Periphery served a breach of contract notice to SCH. (Section 6.3 provides that if a party commits a material breach of the Agreement and fails to correct the breach within ten days of receiving written notice from the non-breaching party, the non-breaching party may terminate the Agreement.)

⁸ Typically, when done remotely, it is acceptable to oversee up to three procedures involving IONM simultaneously. But Kinney refused to connect remotely using the access that Periphery had offered to provide.

1 115. The breach notice referred to the Agreement, which required SCH to provide an
2 “Interpreting Practitioner” to oversee certain procedures, and stated that the practitioners SCH
3 had provided (i.e., the UW Ph.D. group) did not meet the standards required by the Agreement.
4 The notice also stated that the practitioners failed to provide continuous direct oversight of
5 IONM services, arrived late to scheduled procedures, and/or failed to collaborate with Periphery
6 in the delivery of “safe, timely, and effective patient care.” The notice referred to the June 6,
7 2022 incident involving Mr. Kinney. Periphery also attached more than fifty pages of
8 documentation confirming the quality-of-care issues that had arisen, as well as professional
9 guidelines pertaining to the relevant standard of care.

10 116. Periphery requested that SCH provide proof of qualifications for each Interpreting
11 Practitioner supplied by the Hospital, as set forth in Section 3(b) of Exhibit A to the Agreement.
12 Periphery stated that it would continue to comply with the terms of the Agreement but requested
13 an immediate remedy of the breaches set forth in the notice, including the provision of “adequate
14 assurance that any Interpreting Practitioners supplied by Children's pursuant to the Agreement
15 meet the qualification and behavioral standards set forth therein.”

16 117. On or about June 22, 2022, SCH’s Chief Medical Officer, Dr. Ojemann, called
17 Mr. Timm to discuss the matter. During the call, Dr. Ojemann stated that going forward only
18 Periphery oversight providers would be utilized for procedures in which Periphery technologists
19 were providing monitoring services. Dr. Ojemann confirmed this position in a formal letter
20 dated July 1, 2022 (but delivered on or about July 7, 2022).

21 118. Mr. Timm then received an email from Mr. Kinney, in which he stated, “I just
22 found out about your work at getting us removed from SCH as oversight for the cases we have
23
24

1 been participating in. To put it mildly, I am shocked.” Mr. Kinney then accused Mr. Timm and
2 Periphery of engaging in “a conscious effort . . . to undermine our position at SCH.”

3 119. That Mr. Kinney would be “shocked” to learn that Mr. Timm had reported
4 quality-of-care concerns about the UW Ph.D.’s was itself shocking to Mr. Timm, who had first
5 reported these issues more than a year earlier. Since Mr. Kinney was the Director of the UW
6 Ph.D. program and himself one of the oversight providers about whom Mr. Timm had expressed
7 concerns, it was apparent that SCH had never investigated Mr. Timm’s reports through its QI
8 program.

9 120. Mr. Kinney’s claim that he was unaware that Periphery had patient care issues
10 with him and his Ph.D. team was also disingenuous, given Mr. Kinney’s email the previous April
11 2022 regarding the dispute over whether the Ph.D. had to be present for the entire duration of
12 IONM procedures. Mr. Timm and Mr. Kinney had also exchanged throughout the previous year
13 (2021) relating to the availability (and unavailability) of UW Ph.D.’s for certain procedures.

14 121. Moreover, Periphery staff had addressed Mr. Kinney for unacceptable oversight
15 practices only two weeks prior to this email.

16 122. Mr. Timm considered Mr. Kinney’s email to be a form of harassment for his
17 good-faith reporting of serious compliance and patient care issues by the UW Ph.D.’s.
18 Accordingly, he forwarded the email to Dr. Ojemann and requested that SCH take remedial
19 action against Mr. Kinney in accordance with SCH Bylaws. No action was ever taken.

20 123. SCH’s response to the notice of breach, including its “cure” – i.e., that the UW
21 Ph.D. providers would not be providing oversight services in cases that Periphery was supporting
22 – was inadequate. For one thing, in his response, Dr. Ojemann did not even acknowledge or
23 address Periphery’s request for proof of the qualifications of the UW Ph.D.’s. Moreover, he did
24

1 not address the troubling behavior of the UW providers, or the legal and regulatory issues posed
2 by their lack of qualifications and credentials.⁹ Indeed, he simply ignored those issues and
3 treated the problems with the UW Group as though they related primarily to “coordination” and
4 “scheduling.” The letter also failed to acknowledge that Periphery’s complaints had been
5 submitted to the QI program a year earlier without any follow up, let alone remediation or
6 resolution, from SCH.

7 124. During the interim between the exchange of correspondence relating to the
8 breach, Periphery continued to provide IONM services as contractually obligated, and did not
9 interact with the UW Ph.D.’s. Nonetheless, Periphery technologists encountered hostility and
10 retaliation from SCH surgeons. Dr. Perkins, for instance, refused to work with Periphery, but he
11 nonetheless visited the operating room during one of the procedures that Dr. Dahl did with
12 Periphery. Dr. Perkins was visibly angry, crossed his arms, and hovered over Mr. Timm and Mr.
13 Wiman as they attempted to work.

14 125. On or about July 25, 2022, Ms. Risley confirmed that SCH’s legal team was
15 updating the latest draft of the contract to remove a provision allowing UW’s Ph.D.’s to provide
16 oversight services for Periphery’s technologists. Ms. Risley stated that she expected to have
17 something for Mr. Timm within a couple of weeks and noted that SCH’s legal team was aware of
18 the contract expiration date of September 15, 2022.

20 ⁹ In short order, it would become obvious that Dr. Ojemann was simply going to ignore
21 these larger problems, and any notion that SCH was going to “remove” the UW Ph.D.’s from
22 providing oversight services (as Kinney claimed) was exaggerated. Within weeks of the breach
23 notice, SCH simply brought in a different contractor to provide technologists to work on cases
24 with the UW Ph.D.’s. Attesting to the influence of UW leadership in this decision, the contractor
was Specialty Care, who provided “overflow” technologist services at University of Washington
Medical Center (and related facilities) pursuant to a cumulative 7-year, sole source contract with
the University of Washington.

1 126. After all of the issues with the UW Ph.D.'s, Mr. Timm was relieved that under the
2 new contract there would be no issues of the UW Ph.D.'s providing oversight services for cases
3 involving Periphery. But he was still worried that SCH had not responded to any of the other
4 concerns he had raised, and that SCH was still allowing UW Ph.D.'s to provide oversight
5 services despite their lack of proper licensing and qualifications.

6 127. On or about July 27, 2022, Periphery provided a formal response to SCH's letter
7 of July 1, 2022. It reminded SCH that the Agreement required both parties "to comply with
8 applicable federal and state rules, CMS guidelines, professional standards of care, and [SCH]
9 Bylaws," which "includes clearly delineated qualifications for interpreting oversight providers,"
10 as set forth in the Agreement. Periphery cited the American Medical Association's policy stating
11 that interpretation and oversight of IONM constituted the practice of medicine and noted that
12 Washington law and regulations only allowed physicians and Audiologists to perform IONM
13 oversight. The letter stated, "If Seattle Children's Hospital believes Periphery's understanding is
14 incorrect or incomplete, we ask that you educate us." The letter then detailed the dangerous
15 pattern of conduct on the part of the UW Ph.D.'s, and how it had become normalized over the
16 years at SCH, even though it was grossly inconsistent with relevant standards of care, which the
17 letter also detailed.

18 128. Periphery's letter stated that the proposed "remedies" set forth in SCH's response
19 to the breach notice "do not yet address the issues listed," as the UW providers had failed to meet
20 the qualifications and standard of care minimums set forth in the Agreement. Moreover, the
21 letter stated, "using another technical provider [i.e., Specialty Care] to continue with UW
22 oversight does not address the standard of care lapses." Periphery reminded SCH that it was
23
24

1 “professionally and ethically bound” to see these concerns were “taken seriously and dealt with
2 constructively.”

3 129. In closing, Periphery’s letter stated, “It is our desire to continue supporting Seattle
4 Children’s Hospital.” Consistent with that goal, Periphery requested that SCH provide a cure to
5 the breach “that addresses and ensures all UW providers will obtain DABNM certification in
6 accordance with the current national guidelines” and “that addresses and ensures all UW
7 providers will adhere to all ASNМ guidelines pertaining to oversight to ensure patient safety and
8 the standard of care is met or exceed[ed] as in accordance with Facility Bylaws.”

9 130. After the July 27, 2022 correspondence, Mr. Timm heard nothing about the new
10 contract for weeks. On August 24, 2022, he reached out to Ms. Risley to check on the status of
11 the renewal. Two days later, Ms. Risley replied, claiming that SCH’s legal team was continuing
12 to work on the contract. Ms. Risley also stated that she had asked Casey McFarland, the new
13 Business Director for Perioperative and Surgical Services, to work with Whitney Murphy, Vice
14 President of Surgical Services, to determine issues related to the contract.

15 131. Ms. Risley’s statement was odd since both Ms. McFarland and Ms. Murphy were
16 out on leave (and, in fact, did not contact Mr. Timm even though Ms. Risley had requested that
17 they do so). Additionally, the “issues” that Ms. Risley mentioned, including “coverage needs”
18 and “length of [the] contract,” had been discussed and agreed to by the parties (including SCH’s
19 physician leadership) in early 2022 and long since been incorporated into earlier versions of the
20 agreement.

21 132. Worried that SCH was revisiting contract issues and potentially backing out of the
22 renewal contract, Mr. Timm sent Ms. Risley an email the same day, expressing his frustration
23 with how SCH was drawing out the contract renewal and failing to address the issues at the heart
24

1 of the breach notice. He noted, “[I] see SCH is willing to gamble by bringing in a second vendor
2 and continuing to utilize the unlicensed / non-credentialed PHD oversight.” Mr. Timm
3 summarized what Periphery had endured to date, including being “forced to utilize unqualified
4 oversight providers” who were unwilling to meet minimum standards of care, and hoped “that
5 someone [at SCH] engages at a meaningful level soon.”

6 133. On or about August 31, 2022, Periphery received a letter (dated August 30, 2022)
7 from SCH, in which the Hospital responded to the July 27, 2022 letter and August 26, 2022
8 email Mr. Timm sent to Ms. Risley. In the Hospital’s first-ever substantive response to the
9 concerns Mr. Timm had expressed seventeen months earlier, Dr. Ojemann made a number of
10 false and/or unjustified claims.

11 134. First, Dr. Ojemann claimed that the Hospital had “thoroughly” reviewed the cases
12 that Mr. Timm identified in March 2021 “as part of [its] quality improvement program” and that
13 the neuromonitoring services were provided “competently and safely,” even though (1) there was
14 no evidence that such a review had ever occurred; (2) the Hospital had never asked Mr. Timm to
15 provide information regarding such a review, and (3) the Hospital had never provided the
16 findings of such a review. Nor had anyone at SCH mentioned that such a review had taken place
17 in the seventeen months that the matter had been pending.

18 135. Dr. Ojemann made the baldly false claim that these findings of the review had
19 been “previously relayed” to Periphery, which they had not been. Mischaracterizing Periphery’s
20 position, Dr. Ojemann also wrote: “However, we agree that going forward the oversight provider
21 must be ‘continuously available’ to perform interoperative responsibilities during an active
22 procedure.” This standard of care – i.e., that the UW providers be “continuously available” –
23 was at odds with every applicable standard of care, which requires “real time interpretation” of
24

IONM data for the duration of a medical procedure. It was also at odds with Section 3(a) of the Agreement, which requires every surgical neurophysiologist from Periphery to work “at all times” under the direction and supervision of an Interpreting Practitioner.

136. Second, with regard to the Ph.D.’s qualifications, the Hospital took the position that the Ph.D.’s did not need credentials, as the providers were “sufficiently qualified given their academic setting and participation in industry education, teaching, and research.” Thus, Dr. Ojemann essentially parroted, without any support, the position that UW (through Dr. Esselman) had taken with regard to its Ph.D.’s the previous summer. This position was not only unjustified, unlawful, and false, but also illogical, in that it would allow any Ph.D.-level faculty member at UW to practice medicine, which was wildly inconsistent with State and federal laws pertaining to the practice of medicine and licensed medical professions. (A Ph.D. in chemistry could practice anesthesia or a Ph.D. anatomist could operate in surgical procedures, for instance, since these doctorates teach and perform research in these related fields.)

137. Although Dr. Ojemann noted that “peer organizations” did not require such credentials, he provided no such examples. Dr. Ojemann’s further claim that SCH respects the “independent professional judgment of surgeons who prefer to work with” the UW providers was simply non-responsive as to the issue of the qualifications of those providers, and ignored the possibility that the surgeons were aiding and abetting the unlicensed practice of medicine by those providers. Rev. Code Wash. § 18.130.180(10).

138. Dr. Ojemann provided no explanation as to how the UW Ph.D. providers were licensed under state law, as required by Section 2.1 of the Agreement and Paragraph 3 of Exhibit A to the Agreement. The letter also stated that the current Agreement does not require the Ph.D.’s to hold certification through DABNM because the process for obtaining credentials at

1 the Hospital “may” include such certification, which was a misreading of the Agreement. SCH
2 provided no evidence or laws or regulations to support the factual or legal positions it took in the
3 letter.

4 139. Although Dr. Ojemann closed the letter by saying that SCH “continues to want to
5 renew the Agreement with Periphery,” it “consider[s] the outstanding issues resolved in the
6 current state.” In short, in order for the parties to move forward on the new contract, Periphery
7 needed to accept the Hospital’s positions on these issues. Put a different way, SCH was
8 conditioning the renewal on Periphery’s acceptance of the Hospital’s unlawful use of the
9 unlicensed Ph.D.s. (Despite the representations of Dr. Ojemann in July 2022, the Hospital never
10 provided Periphery with a draft of the renewal contract making clear that Periphery would not be
11 required to provide technologist services in cases in which the unlicensed U.W. Ph.D.’s would
12 provide oversight and supervision of IONM.)

13 140. The Hospital’s factual and legal positions were unjustified and unlawful and
14 would have required Periphery to ratify conduct that constituted the unlicensed practice of
15 medicine, substandard and unsafe patient care, and violations of federal regulations pertaining to
16 Medicare and Medicaid.

17 141. Periphery could not lawfully accept these terms.

18 142. On September 9, 2022, Periphery provided a detailed rebuttal of the points made
19 by Dr. Ojemann on behalf of the Hospital, citing to relevant laws, regulations, and professional
20 guidelines. Periphery informed SCH that in light of the unjustified and unlawful positions it was
21 asserting and requiring Periphery to accept as a condition of renewing the contract, it was left
22 with no choice but to not move forward with the renewal.

1 143. On September 16, 2022, the term of the Agreement expired, and Periphery
2 stopped providing neuromonitoring services at SCH. (In fact, on or around September 14 or 15,
3 2022, SCH removed Periphery from a scheduled procedure, replacing it with Specialty Care, on
4 the ground that the Agreement had already expired.)

5 144. As a result of its reports regarding the lack of qualifications of the UW Ph.D.
6 providers, their failure to meet minimum standards of care, as well as its refusal to accept SCH's
7 unlawful positions on these matters, Periphery sustained damages that included the loss of
8 procedures to competitor Specialty Care until the end of the initial term of the Agreement; and
9 the loss of the contract renewal and future at SCH, which was devastating to a new healthcare
10 business trying to survive during COVID-19. Periphery also suffered significant financial losses
11 and asset depreciation on equipment and supplies it had purchased for use at SCH.

12 145. In total, Periphery provided coverage for 640 surgeries during the two-year term
13 of the "overflow" agreement. The revenue it earned for providing those services was in excess
14 of \$1,475,000.00.

15 146. Based on the last draft of the renewal contract, Periphery was projected to cover
16 more surgeries per year at a higher rate per surgery over the succeeding five years of the renewal
17 contract. Since the fee for those services would increase, Periphery's revenue for providing
18 these services was projected to be in excess of \$6,000,000.

19 147. IONM is a niche healthcare service, in which contract decisions are often based
20 on the recommendation of surgeons, who connect administrators with competent IONM
21 providers that they have previously worked with. Following the Hospital's denial of a renewal
22 contract to Periphery, Mr. Timm and Mr. Wiman learned that people connected with the
23 Hospital, including the UW Ph.D.'s, were stating that Periphery had abandoned SCH and lacked
24

1 integrity. These damaging statements made it all but impossible for Periphery to secure
2 subsequent contracts.

3 148. Due to a lack of business, Periphery was forced to let go employees and
4 contractors, and the company eventually seized being able to provide IONM services.

5 **COUNT I – BREACH OF CONTRACT**
6 **(Against Defendant SCH)**

7 149. Plaintiff restates and re-alleges the foregoing paragraphs as though fully set forth
8 herein.

9 150. On or about September 15, 2020, Periphery and Defendants entered into a
10 “Clinical Services Agreement for Surgical Neuromonitoring Services” (“the Agreement”)

11 151. The Agreement was a valid, legally enforceable contract.

12 152. Among other obligations, in cases in which Defendant SCH provided an
13 “Interpreting Practitioner” for procedures in which Periphery was providing the technologist,
14 Defendant agreed to provide Interpreting Practitioners who met the licensing and qualification
15 requirements of Section 2.1 of the Agreement and Exhibit A to the Agreement.

16 153. Those requirements included:

17 (i) valid and unrestricted licensure, accreditations, certifications, and clinical
18 privileges necessary to furnish the Services at Facilities; (ii) active enrollment and
19 eligibility with respect to all state and federal health care programs; and (iii)
20 demonstrated competency to provide the Services in a timely, safe, and effective
21 manner in accordance with applicable ethical and professional standards.

22 154. Additionally, Section 8.3 of the Agreement stated: “The parties intend this
23 Agreement to comply with all laws, regulations and requirements applicable to physicians,
24 hospitals, Medicare and Medicaid participants, and healthcare professionals in general.”

155. Defendant SCH failed to perform its obligations under the Agreement, including
by providing Interpreting Practitioners who were not licensed to provide such services under

1 state law; did not meet the eligibility requirements of all state and federal health care programs;
2 and did not have demonstrated competency to provide the services in a timely, safe, and effective
3 manner in accordance with applicable ethical and professional standards.

4 156. Periphery brought these failures to the attention of Defendant, but SCH did not
5 remediate or cure these issues.

6 157. As a result of Defendant's failure to perform its obligations under the Agreement,
7 it materially breached the Agreement.

8 158. As a result of Defendant's material breaches of the Agreement, Periphery lost the
9 opportunity to provide technologist services in certain cases until the end of the initial term of the
10 Agreement; was unable to use equipment and supplies it had purchased to provide those services;
11 and was denied the opportunity to renew the Agreement with SCH.

12 159. Defendant's breaches proximately caused Periphery to suffer economic and
13 consequential losses, justifying an award of monetary damages in an amount to be proven at trial
14 and other just relief, but no less than \$6 million.

15 160. Periphery seeks all relief that the court deems appropriate, including declaratory
16 relief, injunctive relief, and an award of damages against Defendant.

17 **COUNT II – BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**
18 **(Against Defendant SCH)**

19 161. Plaintiff restates and re-alleges the foregoing paragraphs as though fully set forth
20 herein.

21 162. Under Washington law, there is in every contract an implied duty of good faith
22 and fair dealing that requires the parties to cooperate with each other so that each may obtain the
23 full benefit of performance. The implied duty of good faith and fair dealing presumes honesty
24 and lawfulness of purpose.

1 163. A violation of a statutory duty related to a contract term constitutes a breach of
2 the implied duty of good faith and fair dealing.

3 164. Moreover, actions taken by one party that interfere with the other party's ability to
4 perform the contract breach the implied duty of good faith and fair dealing.

5 165. When a party has discretion over a future contract term, it has an implied duty of
6 good faith and fair dealing in setting and performing that contract term.

7 166. On September 15, 2020, Periphery and Defendant SCH entered into a "Clinical
8 Services Agreement for Surgical Neuromonitoring Services" ("the Agreement")

9 167. The Agreement was a valid, legally enforceable contract, and thus contained an
10 implied duty of good faith and fair dealing that required the parties to cooperate with each other
11 so that each could obtain the full benefit of performance.

12 168. Defendant breached the implied duty of good faith and fair dealing by, among
13 other ways, forcing Periphery to work with unlicensed oversight providers; assigning
14 technologist work that had formerly been performed by Periphery to another vendor who was
15 willing to work with unlicensed oversight providers; and conditioning a renewal of Periphery's
16 Agreement on its willingness to work with oversight providers who were unlicensed and lacked a
17 scope of practice under state law.

18 169. Additionally, although the Agreement provided Defendant with discretion as to
19 whether to renew the Agreement beyond its initial term, Defendant denied renewal on the basis
20 that Periphery would not agree to be subject to oversight by providers who were unlicensed,
21 lacked a scope of practice under state law, and/or were providing oversight services in violation
22 of state law. This also constitutes a breach of the implied duty of good faith and fair dealing.

1 170. Defendant's breaches of the implied duty of good faith and fair dealing
2 proximately caused Periphery to suffer economic and consequential losses, justifying an award
3 of monetary damages in an amount to be proven at trial and other just relief, but no less than \$6
4 million.

5 171. Periphery seeks all relief that the court deems appropriate, including declaratory
6 relief, injunctive relief, and an award of damages against Defendant.

7 **COUNT III – TORTIOUS INTERFERENCE WITH CONTRACT**
8 **(Against Defendants UWP, Esselman, and Kinney)**

9 172. Plaintiff restates and re-alleges the foregoing paragraphs as though fully set forth
10 herein.

11 173. On September 15, 2020, Periphery and Defendant SCH entered into a "Clinical
12 Services Agreement for Surgical Neuromonitoring Services" ("the Agreement")

13 174. The Agreement was a valid, legally enforceable contract.

14 175. Defendants UWP, Esselman and Kinney had knowledge of the Agreement.

15 176. Defendants UWP, Esselman and Kinney took actions to interfere with the
16 Agreement, including by failing to show up on time for scheduled procedures; failing to
17 continuously and directly supervise Periphery technologists, thus obstructing and imperiling
18 Periphery's own performance under the Agreement; misrepresenting and lying about the
19 qualifications of the UW Ph.D. oversight providers as a way of undermining Periphery's existing
20 position and relationship with the Hospital; and exerting their influence as affiliates of SCH to
21 undermine Periphery's existing position and relationship with the Hospital.

22 177. These actions were taken with the intent to cause SCH to breach and/or not to
23 renew the Agreement with Periphery, and with knowledge that interference with the Agreement
24 was substantially certain to result from these actions.

1 178. These actions involved conduct that was false and otherwise improper.

2 179. The Defendants took these actions in bad faith for an improper purpose, using
3 improper means. Among other acts, Defendants' actions violated relevant state laws governing
4 the practice of medicine and professional standards of patient care. Defendants also asserted that
5 they had a lawful right to provide oversight services using unlicensed Ph.D.s, which was an
6 unlawful position that they knew was unlawful.

7 180. The Defendants' acts of interference with the Agreement were the proximate
8 cause of frustration and aggravation in Periphery's performance of the Agreement; harassment
9 and hostility suffered by Mr. Wiman and Mr. Timm; and SCH's decision to breach the
10 Agreement by assigning technologist work that had formerly been performed by Periphery to
11 another vendor who was willing to work with unlicensed oversight providers (who itself was
12 already a contractor of Defendants).

13 181. Periphery has suffered economic and consequential losses because of Defendants'
14 interference with the Agreement, justifying an award of monetary damages in an amount to be
15 proven at trial and other just relief in excess of \$6 million.

16 182. Additionally, as a result of Defendants' actions, Mr. Timm and Mr. Wiman
17 suffered mental distress, discomfort, inconvenience, injury to reputation, and humiliation,
18 justifying an award of monetary damages in an amount to be proven at trial.

19 183. Plaintiffs seek all relief that the court deems appropriate, including declaratory
20 relief, injunctive relief, and an award of actual damages against Defendants.

21 **COUNT IV – TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIP OR**
22 **EXPECTANCY**
23 **(Against Defendants UWP, Esselman, and Kinney)**

1 184. Plaintiff restates and re-alleges the foregoing paragraphs as though fully set forth
2 herein.

3 185. Based on their negotiation and execution of an agreement for Periphery to provide
4 IONM services, Periphery and SCH had a valid business relationship.

5 186. Based on the negotiation and advanced drafts they had exchanged regarding an
6 upcoming five-year renewal of the agreement for Periphery to provide IONM services, Periphery
7 had a valid business expectancy in the renewal.

8 187. Defendants UWP, Esselman and Kinney had knowledge of this business
9 relationship and this business expectancy.

10 188. Defendants UWP, Esselman and Kinney took actions to interfere with this
11 business relationship and business expectancy, including by, among other ways, exerting their
12 influence as affiliates of SCH to undermine Periphery's existing position and relationship with
13 the Hospital; and misrepresenting and lying about the qualifications of the UW Ph.D. oversight
14 providers as a way of causing SCH to deny the renewal to Periphery.

15 189. These actions were taken with the intent to cause SCH to end the business
16 relationship and the business expectancy by not renewing the Agreement with Periphery, and
17 with knowledge that interference with the relationship and expectancy was substantially certain
18 to result from these actions.

19 190. These actions involved conduct that was false and otherwise improper.

20 191. The Defendants took these actions in bad faith for an improper purpose, using
21 improper means. Among other acts, Defendants asserted that they had a lawful right to provide
22 oversight services using unlicensed Ph.D.'s, which was an unlawful position that they knew was
23 unlawful, and which they intended for SCH to adopt as its own position.

192. The Defendants' acts of interference with the Agreement were the proximate cause of SCH's decision to deny Periphery the five-year renewal contract.

193. Periphery has suffered economic and consequential losses because of Defendants' interference with the Agreement, justifying an award of monetary damages in an amount to be proven at trial and other just relief, but not less than \$6 million.

194. Additionally, as a result of Defendants' actions, Mr. Timm and Mr. Wiman suffered mental distress, discomfort, inconvenience, injury to reputation, and humiliation, justifying an award of monetary damages in an amount to be proven at trial.

195. Plaintiffs seek all relief that the court deems appropriate, including declaratory relief, injunctive relief, and an award of actual damages against Defendants.

**COUNT V – RETALIATION IN VIOLATION OF THE WASHINGTON HEALTHCARE
WHISTLEBLOWER STATUTE (REV. CODE WASH. § 43.70.075)
(Against All Defendants)**

196. Plaintiff restates and re-alleges the foregoing paragraphs as though fully set forth herein.

197. Section 43.70.075(1)(d) of the Revised Code of Washington provides:

A whistleblower who is not an employee and who as a result of being a whistleblower has been subjected to reprisal or retaliatory action may initiate a civil action in a court of competent jurisdiction to either enjoin further violations, recover actual damages sustained by the whistleblower, or both, and recover the cost of the suit including reasonable attorneys' fees.

Rev. Code Wash. § 43.70.075(1)(d).

198. The Statute defines "whistleblower" to mean "a consumer, employee, or health care professional . . . who in good faith reports alleged quality of care concerns to the department of health or initiates, participates, or cooperates in any investigation or administrative proceeding under this section. Rev. Code Wash. § 43.70.075(3)(d).

1 199. Mr. Timm and Mr. Wiman are “health care professionals” under Section
2 43.70.075(3)(d).

3 200. Mr. Timm and Mr. Wiman are whistleblowers under Section 43.70.075(1)(d)
4 because they made good faith reports of alleged quality of care concerns.

5 201. Under Rev. Code Wash. § 70.56.020(2), when a medical facility confirms that an
6 adverse event has occurred, it shall notify the Department of Health of the event within forty-
7 eight hours and shall submit a report of the event within forty-five days. The report must include
8 a “root cause analysis” of the event and describe any corrective action that will be implemented
9 or provide reasons why corrective action was not taken. Rev. Code Wash. § 70.56.020(4).

10 202. An adverse event includes “[a]ny instance of care ordered by or provided by
11 someone impersonating a physician, nurse, pharmacist, or other licensed health care provider.”
12 Wash. Admin Code § 246-302-030(7)(a).

13 203. Mr. Timm and Mr. Wiman repeatedly made reports to SCH regarding the
14 Hospital’s use of UW Ph.D. providers who were engaged in the practice of medicine but were
15 unlicensed and lacked a scope of practice under state law, and thus were “impersonating” a
16 physician or other licensed health care provider.

17 204. Thus, for purposes of the statute, Mr. Timm and Mr. Wiman were reporting
18 “adverse events” to the Hospital, which had a mandatory duty to report such events to the
19 Department of Health. As such, Mr. Timm and Mr. Wiman’s reports were reports made to the
20 “Department of Health” for purposes of Section 43.70.075(3)(d).

21 205. A hospital also has a duty to report to the Department of Health if a licensed
22 practitioner has committed unprofessional conduct as defined in Section 18.130.180. Rev. Code
23 Wash. § 18.130.080(1)(b)(i); Rev. Code Wash. § 70.41.210. Under Rev. Code Wash. §
24

1 18.130.180(10), unprofessional conduct includes “[a]iding or abetting an unlicensed person to
2 practice when a license is required.”

3 206. Mr. Timm and Mr. Wiman repeatedly made reports to SCH regarding the aiding
4 and abetting, and support of licensed persons (including Drs. Randall Bly, John Dahl, Jonathan
5 Perkins, Samuel Browd, and Jeffrey Ojemann) in using UW Ph.D. providers who were engaged
6 in the practice of medicine but were unlicensed and lacked a scope of practice under state law.

7 207. Thus, for purposes of the statute, Mr. Timm and Mr. Wiman were reporting
8 unprofessional conduct of licensed persons to the Hospital, which had a mandatory duty to report
9 such conduct to the Department of Health. As such, Mr. Timm and Mr. Wiman’s reports were
10 reports made to the “Department of Health” for purposes of Section 43.70.075(3)(d).

11 208. Additionally, a hospital is required to establish a quality improvement program
12 under state law. Rev. Code Wash. § 70.41.200(1). A quality improvement program must have
13 “[p]olicies to ensure compliance with the reporting requirements of this section,” including
14 Section 70.41.210 regarding the reporting of unprofessional conduct to the Department of
15 Health. Rev. Code Wash. § 70.41.200.

16 209. Mr. Timm and Mr. Wiman made a number of their reports through the Hospital’s
17 quality improvement program, and as such, their reports were made to the “Department of
18 Health” for purposes of Section 43.70.075(3)(d).

19 210. Mr. Timm and Mr. Wiman made their reports of quality-of-care issues in good
20 faith.

21 211. Defendants had knowledge and were aware that Mr. Timm and Mr. Wiman had
22 made these reports.

1 212. Defendants SCH, CUMG, Ojemann, Browd, and Perkins took reprisals and
2 retaliatory actions against Mr. Timm and Mr. Wiman, including, among other ways, by harassing
3 Mr. Timm and Mr. Wiman; replacing them as providers of IONM services in cases involving the
4 UW Ph.D.s; making the renewal of their company's contract contingent on accepting the
5 unlicensed practice of medicine, as well as dangerous behaviors and misconduct by the UW
6 Ph.D.s; and denying them a renewal contract to provide IONM services at the Hospital.

7 213. Defendants UWP, Esselman, and Kinney took reprisals and retaliatory actions
8 against Mr. Timm and Mr. Wiman, including by failing to show up on time for scheduled
9 procedures; failing to continuously and directly supervise Periphery technologists, thus
10 obstructing and imperiling Periphery's own performance under the Agreement; harassing them;
11 misrepresenting and lying about qualifications of the UW Ph.D. oversight providers as a way of
12 undermining Periphery's existing contract and relationship with the Hospital; and exerting their
13 influence as affiliates of SCH to undermine Periphery's existing position and to induce SCH to
14 deny a contract renewal to Periphery.

15 214. Defendants took these reprisals and retaliatory actions because Mr. Timm and Mr.
16 Wiman were whistleblowers and engaged in actions that made them whistleblowers.

17 215. By these actions, Defendants violated Rev. Code Wash. § 43.70.075(1)(d).

18 216. As a result of Defendants' unlawful actions against Mr. Timm and Mr. Wiman,
19 Plaintiffs (including Periphery) have suffered economic and consequential losses, justifying an
20 award of monetary damages in an amount to be proven at trial and other just relief, but no less
21 than \$6 million.

217. Additionally, as a result of Defendants' unlawful actions against Mr. Timm and Mr. Wiman, they have suffered emotional anguish and distress, as well as damage to their reputations, justifying an award of monetary damages to be proven at trial.

218. As authorized by Rev. Code. Wash. § 43.70.075(1)(d), Plaintiffs seek all such relief as the court deems appropriate, including injunctive relief, an award of actual damages against Defendant, and recovery of their attorneys' fees and litigation costs in this matter.

///

///

COUNT VI – RETALIATION IN VIOLATION OF THE FALSE CLAIMS ACT (31 U.S.C. § 3730(h))
(Against Defendants SCH, CUMG, and UWP)

219. Plaintiffs restate and re-allege the foregoing paragraphs as though fully set forth herein.

220. The federal False Claims Act ("FCA") provides that a contractor "shall be entitled to all relief necessary to make" the contractor whole if the contractor is discriminated against because of lawful acts done by the contractor "in furtherance of an action" under the FCA or "other efforts to stop 1 or more violations" of the FCA. *See* 31 U.S.C. § 3730(h)(1).

221. A plaintiff engages in "protected activity" under the FCA by taking lawful actions "in furtherance of" a qui tam under the False Claims Act or by making "other efforts to stop 1 or more violations of this subchapter."

222. SCH was a "participating" hospital under Medicare since it treated patients qualifying as disabled under the federal healthcare system. The UW Ph.D.s were providing services at other participating hospitals, including the University of Washington Medical Center and Harborview. SCH, as well as the University of Washington Medical Center and Harborview, did a significant amount of billing to Medicare.

223. Because the UW Ph.D.'s were unlicensed and otherwise lacked a scope of practice under state law, their services were not eligible for reimbursement under the requirements of the Centers for Medicare and Medicaid Services ("CMS"). *See* 42 C.F.R. § 410.32; *see also* 42 C.F.R. § 482.11(c); LCD L14726 (Sensory Evoked Potentials and Intraop Neurophysiology Monitoring).

224. Mr. Timm and Mr. Wiman attempted to stop these violations of the FCA by reporting their concerns that the oversight services the UW Ph.D.'s were providing were not eligible for reimbursement under Medicare because the UW Ph.D.'s were not licensed under state law and lacked a scope of practice, and because the UW Ph.D.'s were not meeting CMS guidelines for billing, including because they were failing to provide "continuous oversight" during procedures.

225. Given their years of experience performing IONM technologist services and their familiarity with Medicare laws, regulations, and guidelines, Mr. Timm and Mr. Wiman believed that Defendants were violating the FCA by attempting to obtain reimbursement for IONM supervision and interpretation services performed by providers who were not licensed to provide those services, which (as a result) were not eligible for reimbursement.

226. Mr. Timm and Mr. Wiman's belief that Defendants were violating the FCA was objectively reasonable.

227. These actions by Mr. Timm and Mr. Wiman constituted protected activity under the FCA.

228. Defendants had knowledge and were aware that Mr. Timm and Mr. Wiman engaged in protected activity under the FCA.

1 229. Defendants SCH and CUMG retaliated and discriminated against Mr. Timm, Mr.
2 Wiman, and Periphery (their company) by, among other ways, harassing them; replacing them as
3 a provider of IONM services in cases involving the UW Ph.D.s; and refusing to renew the
4 contract with Periphery to provide IONM technologist services.

5 230. Defendant UWP retaliated and discriminated against Mr. Timm, Mr. Wiman, and
6 Periphery (their company) by, among other ways, misrepresenting and lying about qualifications
7 of the UW Ph.D. oversight providers as a way of undermining Periphery's existing contract and
8 relationship with the Hospital; and exerting its influence as an affiliate of SCH to undermine
9 Periphery's existing position and to induce SCH to deny a contract renewal to Periphery.

10 231. Defendants took these actions of retaliation and discrimination because Mr. Timm
11 and Mr. Wiman engaged in protected activity.

12 232. As a result of Defendants' unlawful actions against Mr. Timm and Mr. Wiman,
13 Plaintiffs (including Periphery) have suffered economic and consequential losses, justifying an
14 award of monetary damages in an amount to be proven at trial and other just relief, but no less
15 than \$6 million.

16 233. Additionally, as a result of Defendant's unlawful actions against Mr. Timm and
17 Mr. Wiman, have suffered emotional anguish and distress, as well as damage to their reputations,
18 justifying an award of monetary damages to be proven at trial.

19 234. As authorized by 31 U.S.C. § 3730(h), Plaintiffs seek all relief necessary to make
20 them whole, including reinstatement; damages as set forth in the statute; two times the amount of
21 economic damages (backpay) awarded under the statute; interest; compensation for special
22 damages; reimbursement of attorneys' fees, and costs associated with pursuing this matter; and
23 all other relief that the court deems appropriate.
24

**COUNT VII – RETALIATION IN VIOLATION OF THE WASHINGTON MEDICAID
FRAUD FALSE CLAIMS ACT (REV. CODE. WASH. § 74.66.090(1))
(Against Defendants SCH, CUMG, and UWP)**

235. Plaintiff restates and re-alleges the foregoing paragraphs as though fully set forth herein.

236. The Washington Medicaid Fraud False Claims Act (“WA FCA”) provides that a contractor “is entitled to all relief necessary to make” the contractor whole if the contractor is discriminated against because of lawful acts done by the contractor “in furtherance of an action” under the WA FCA or “other efforts to stop one or more violations” of the WA FCA. *See* Rev. Code Wash. § 74.66.090(1).

237. A plaintiff engages in “protected activity” under the WA FCA by taking lawful actions “in furtherance of” an action under the WA FCA or by making “other efforts to stop one or more violations” of the WA FCA.

238. SCH was a “participating” hospital under Medicaid (known as “Apple Health,” in the State of Washington). The UW Ph.D.’s were providing services at other participating hospitals, including the University of Washington Medical Center and Harborview. SCH, as well as the University of Washington Medical Center and Harborview, did a significant amount of billing to Medicaid.

239. Because the UW Ph.D.’s were unlicensed and otherwise lacked a scope of practice under state law, their services were not eligible for reimbursement under the requirements of the Centers for Medicare and Medicaid Services (“CMS”). *See* 42 C.F.R. § 410.32; *see also* 42 C.F.R. § 482.11(c); LCD L14726 (Sensory Evoked Potentials and Intraop Neurophysiology Monitoring).

1 240. Mr. Timm and Mr. Wiman attempted to stop these violations of the WA FCA by
2 reporting their concerns that the oversight services the UW Ph.D.'s were providing were not
3 eligible for reimbursement under Medicaid because the UW Ph.D.'s were not licensed under
4 state law and lacked a scope of practice, and because the UW Ph.D.'s were not meeting CMS
5 guidelines for billing, including because they were failing to provide "continuous oversight"
6 during procedures.

7 241. Given their years of experience performing IONM technologist services and their
8 familiarity with Medicaid laws, regulations, and guidelines, Mr. Timm and Mr. Wiman believed
9 that Defendants were violating the WA FCA by attempting to obtain reimbursement for IONM
10 supervision and interpretation services performed by providers who were not licensed to provide
11 those services, which (as a result) were not eligible for reimbursement.

12 242. Mr. Timm and Mr. Wiman's beliefs that Defendants were violating the WA FCA
13 were objectively reasonable.

14 243. These actions by Mr. Timm and Mr. Wiman constituted protected activity under
15 the WA FCA.

16 244. Defendants had knowledge and were aware that Mr. Timm and Mr. Wiman
17 engaged in protected activity under the WA FCA.

18 245. Defendants SCH and CUMG retaliated and discriminated against Mr. Timm, Mr.
19 Wiman, and Periphery (their company) by, among other ways, harassing them; replacing them as
20 a provider of IONM services in cases involving the UW Ph.D.'s; and refusing to renew the
21 contract with Periphery to provide IONM technologist services.

22 246. Defendant UWP retaliated and discriminated against Mr. Timm, Mr. Wiman, and
23 Periphery (their company) by, among other ways, misrepresenting and lying about qualifications
24

1 of the UW Ph.D. oversight providers as a way of undermining Periphery's existing contract and
2 relationship with the Hospital; and exerting its influence as an affiliate of SCH to undermine
3 Periphery's existing position and to induce SCH to deny a contract renewal to Periphery.

4 247. Defendants took these actions of retaliation and discrimination because Mr. Timm
5 and Mr. Wiman engaged in protected activity.

6 248. Defendants' actions were taken with evil motive, actual malice, intent to injure,
7 deliberate indifference and/or willful disregard for the rights of Plaintiffs, and/or with reckless
8 indifference to those rights.

9 249. As a result of Defendants' unlawful actions against Mr. Timm and Mr. Wiman,
10 Plaintiffs (including Periphery) have suffered economic and consequential losses, justifying an
11 award of monetary damages in an amount to be proven at trial and other just relief, but no less
12 than \$6 million.

13 250. Additionally, as a result of Defendants' unlawful actions against Mr. Timm and
14 Mr. Wiman, they have suffered emotional anguish and distress, as well as damage to their
15 reputations, justifying an award of monetary damages to be proven at trial.

16 251. As authorized by Rev. Code Wash. § 74.66.090(1), Plaintiffs seek all relief
17 necessary to make them whole, including reinstatement; damages as set forth in the statute; two
18 times the amount of economic damages (backpay) awarded under the statute; interest;
19 compensation for special damages; reimbursement of attorneys' fees, and costs associated with
20 pursuing this matter; and all other relief that the court deems appropriate.

21 252. Additionally, pursuant to Section 74.66.090(3), Plaintiff seeks all relief "available
22 under [Rev. Code Wash.] 49.60.030(2)," including but not limited to economic damages,
23
24

1 compensatory damages, and punitive damages authorized directly or by reference in that
2 provision.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, in consideration of the foregoing, Plaintiffs respectfully request that this
5 Court enter judgment in Plaintiffs' favor and grant the following relief:

- 6 a) Declare that Defendant SCH breached the Agreement with Periphery by using UW
7 Ph.D. providers who lacked licenses and a scope of practice under state law to oversee
8 IONM services;
- 9 b) Declare that Defendant SCH breached the implied covenant of good faith and fair
10 dealing with Periphery;
- 11 c) Declare that Defendants UWP, Esselman, and Kinney tortiously interfered with the
12 Agreement between SCH and Periphery;
- 13 d) Declare that Defendants UWP, Esselman, and Kinney tortiously interfered with the
14 business relationship between SCH and Periphery, as well as the business expectancy
15 that Periphery had in a renewal of its contract with SCH;
- 16 e) Declare that all Defendants retaliated against Plaintiffs in violation of the Washington
17 Healthcare Whistleblower Statute;
- 18 f) Declare that Defendants SCH, CUMG, and UWP retaliated against Plaintiffs in
19 violation of the False Claims Act and the Washington State Medicaid Fraud False
20 Claims Act;
- 21 g) Award Plaintiffs economic damages, including consequential damages, in an amount
22 to be proven at trial;
- 23 h) Award Plaintiffs compensatory damages in an amount to be proven at trial;
- 24

- 1 i) Award Plaintiffs punitive damages in an amount to be proven at trial;
- 2 j) Award pre-judgment interest and post-judgment interest at the applicable rates, court
- 3 costs, and attorneys' fees, where applicable; and
- 4 k) Award such other and further relief as this Court may deem just and proper.
- 5

6 DATED this 29th day of August, 2024.

7 /s/ Brad J. Moore

8 Brad J. Moore WSBA #21802
9 STRITMATTER KESSLER KOEHLER
10 MOORE
11 3600 15th Avenue West, #300
12 Seattle, WA 98119
13 Tel: 206.448.1777
14 Fax: 206.728.2131
15 brad@stritmatter.com

16

17

18

19

20

21

22

23

24

EXHIBIT B

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

DONALD TIMM, an individual; REED
WIMAN, an individual; and PERIPHERY
NEUROPHYSIOLOGY, a foreign limited
liability company,

Plaintiffs,

vs.

SEATTLE CHILDREN'S HOSPITAL, a
Washington non-profit corporation; THE
ASSOCIATION OF CHRM AND
UNIVERSITY PHYSICIANS (d/b/a
CHILDREN'S UNIVERSITY MEDICAL
GROUP), a Washington non-profit
Corporation; JEFFREY G. OJEMANN, M.D.,
an individual; SAMUEL BROWD, M.D., an
individual; JONATHAN PERKINS, D.O., an
individual; THE ASSOCIATION OF
UNIVERSITY PHYSICIANS (d/b/a UW
PHYSICIANS), a Washington non-profit
corporation; PETER C. ESSELMAN, M.D.;
and GREGORY KINNEY, PH.D., an
individual,

Defendants.

NO. 24-2-19606-4 SEA

AMENDED COMPLAINT

Plaintiffs, by and through their attorneys of record, STRITMATTER KESSLER
KOEHLER MOORE, and for causes of action against Defendants, allege as follows:

//

INTRODUCTION

1
2 1. Through their company, Plaintiff Periphery Neurophysiology, LLC, Plaintiffs
3 Donald Timm and Reed Wiman contracted with Defendant Seattle Children’s Hospital (“SCH”
4 or “the Hospital”) to provide intraoperative monitoring services to the Hospital. The Hospital
5 agreed to supply oversight providers for those services who were duly licensed and qualified.
6 Instead, through the University of Washington and its affiliates, the Hospital provided unlicensed
7 and unqualified oversight providers (who held Ph.D.’s instead of medical degrees). When
8 Plaintiffs reported their concerns regarding these unlicensed medical providers and identified
9 threats to patient safety as well as actual injuries to patients caused by the unlicensed providers,
10 the Hospital failed to investigate or address their concerns. Instead, the Hospital brought in
11 another vendor who was willing to work with the unlicensed providers, and decided not to renew
12 the contract held with Plaintiffs, despite being deemed best qualified and at the final stage of the
13 contract renewal process.

14 2. This is an action for damages and other relief resulting from these unlawful
15 actions.

PARTIES

16
17 3. Plaintiff Donald Timm (“Plaintiff Timm” or “Mr. Timm”) is a resident of the
18 State of Washington. He is one of two members / owners of Periphery Neurophysiology, LLC.

19 4. Plaintiff Reed Wiman (“Plaintiff Wiman” or “Mr. Wiman”) is a resident of the
20 State of Washington. He is one of two members / owners of Periphery Neurophysiology, LLC.

21 5. Plaintiff Periphery Neurophysiology, LLC (“Periphery” or “the Company”) is a
22 limited liability company organized under the laws of the State of New Hampshire. Its principal
23
24

1 place of business is in the State of Washington. At all times relevant to this action, Periphery
2 provided contracted healthcare services for intraoperative neurophysiologic monitoring.

3 6. Defendant Seattle Children's Hospital ("SCH" or "the Hospital") is a non-profit
4 corporation organized under the laws of the State of Washington. Its principal place of business
5 is 4800 Sand Point Way, NE, Seattle, Washington, 98105.

6 7. Defendant The Association of CHRMC and University Physicians, d/b/a/
7 Children's University Medical Group, (hereinafter "CUMG") is a non-profit corporation
8 organized under the laws of the State of Washington. Its principal place of business is 4500
9 Sand Point Way, NE, Suite 100, Seattle, Washington, 98105. CUMG is a pediatric group
10 practice that was established to support the academic, research, and clinical missions of its
11 corporate members, University of Washington Medicine ("UW Medicine") and SCH.

12 8. Jeffrey G. Ojemann, M.D., is a resident of the State of Washington. At all times
13 relevant to this action, he was either an employee or agent of CUMG.

14 9. Samuel Browd, M.D., is a resident of the State of Washington. At all times
15 relevant to this action, he was either an employee or agent of CUMG.

16 10. Jonathan Perkins, D.O., is a resident of the State of Washington. At all times
17 relevant to this action, he was either an employee or agent of CUMG.

18 11. The Association of University Physicians, d/b/a UW Physicians, (hereinafter
19 "UWP") is a non-profit corporation organized under the laws of the State of Washington. Its
20 principal place of business is 701 Fifth Avenue, Suite 700, Seattle, Washington 98104. UWP is
21 the practice group for more than 2,600 providers and other healthcare professionals associated
22 with UW Medicine who care for patients throughout the region. These providers teach at the
23
24

1 University of Washington Medical School and practice medicine at UW Medicine facilities,
2 including SCH.

3 12. Peter C. Esselman, M.D., is a resident of the State of Washington. At all times
4 relevant to this action, Dr. Esselman was the Chair of the Department of Rehabilitation Medicine
5 at the University of Washington Medical Center. At all times relevant to this action, he was
6 employed by UWP.

7 13. Gregory Kinney, Ph.D. is a resident of the State of Washington. At all times
8 relevant to this action, Mr. Kinney was the Director of the Neuromonitoring Program with the
9 Department of Rehabilitation Medicine at the University of Washington. At all times relevant
10 to this action, he was employed by the University of Washington and by extension contracted to
11 provide services to SCH.

12 14. Pursuant to Rev. Code Wash. § 4.92.110, Plaintiffs have filed a notice of claim as
13 to the University of Washington, University of Washington Medicine, and the University of
14 Washington School of Medicine relating to the events alleged in this complaint. When the notice
15 period elapses, Plaintiffs intend to amend the complaint to add those parties as defendants.

16 **JURISDICTION AND VENUE**

17 15. Pursuant to Rev. Code Wash. § 2.08.010, this Court has subject matter
18 jurisdiction over Plaintiffs' claims because the amount in controversy exceeds three hundred
19 dollars, and subject matter jurisdiction has not been by law vested exclusively in another court.

20 16. This Court has subject matter jurisdiction over Plaintiffs' claims under the
21 (federal) False Claims Act, 31 U.S.C. § 3730(h), because state courts have concurrent
22 jurisdiction of claims brought under this section.
23
24

1 17. This Court has personal jurisdiction over all defendants because they all reside in
2 the State of Washington and/or conduct business in the State of Washington.

3 18. Pursuant to Rev. Code Wash. § 4.12.020, venue is proper because the incidents
4 giving rise to these causes of action occurred in King County, Washington.

5 **FACTUAL ALLEGATIONS**

6 19. Mr. Timm and Mr. Wiman formed Periphery on or around August 22, 2019 to
7 provide services for intraoperative neurophysiologic monitoring (“IONM”).

8 20. Intraoperative neurophysiological monitoring refers to a group of procedures (or
9 studies) used to identify and monitor the neural pathways of a patient during surgery in order to
10 prevent damage to the nervous system. IONM is commonly used during certain neurological,
11 orthopedic, peripheral nerve, and vascular surgeries that have the potential to interfere with, and
12 cause permanent damage to, the integrity of a patient’s neural structures. IONM allows for the
13 earliest possible intervention, and surgical adjustment, to avoid neurological damage occurring
14 during surgery.

15 21. Functionally, IONM involves the performance of two roles – those of a
16 neuromonitoring technologist and a supervising professional. The technologist, who is trained in
17 physiological monitoring techniques (such as electroencephalography, electromyography, and
18 evoked potentials, among others), performs the patient setup, runs the modalities, and acts as a
19 liaison for the interpreting professional. The supervising professional supervises the work of the
20 technologist, interprets the data in real time, communicates any significant findings to the
21 surgeon (directly or through the technologist), and provides diagnostic, therapeutic, and
22 interventional recommendations to the surgeon and other members of the patient care team, such
23
24

1 as the anesthesiologist. The supervising professional is also responsible for writing post-
2 operative reports regarding the IONM data collected during the procedure.

3 22. Mr. Timm and Mr. Wiman are both certified surgical neurophysiologists. Because
4 Mr. Timm and Mr. Wiman were both technologists, in providing services through their
5 company, they intended to contract with licensed professionals to provide the “professional” or
6 “oversight” component of IONM.

7 **Periphery Contracted with Seattle Children’s Hospital**

8 23. After forming Periphery, Mr. Timm learned that SCH was urgently seeking a new
9 IONM contractor. Because Mr. Timm worked as a surgical neurophysiologist at the University
10 of Washington from 2013 to early 2018, he knew from his own experience that for a period of
11 nearly twenty-five years, SCH’s contractor for IONM services had been the University of
12 Washington (“UW”), which provided both technologist and professional services through the
13 Division of Neurophysiology within its Department of Rehabilitation Medicine. The Director of
14 the program was Gregory Kinney, Ph.D. Mr. Timm was also aware that UW’s IONM program
15 had long experienced staff attrition issues.

16 24. Mr. Timm reached out to SCH about its IONM services, and discussions began in
17 earnest in March 2020. Renelle Risley, SCH’s Director of Business Operations for Surgical and
18 Periop Services, organized a meeting for Mr. Timm to discuss Periphery’s proposal and clinical
19 aspects of IONM with Ms. Risley, Dr. Jeffrey Ojemann (Surgeon-In-Chief at SCH), and Dr.
20 Jennifer Bauer (Chief of Spine Surgery at SCH). During the meeting, SCH’s physician
21 leadership openly vented their frustrations with the UW providers, complaining that UW did not
22 have enough people to handle its caseload and that, on occasion, the people it did have would fail
23
24

1 to show up for scheduled procedures. SCH's leaders indicated that it wanted to replace UW
2 completely as its vendor.

3 25. Discussions between Periphery and SCH continued throughout the summer of
4 2020 (slowed by the pandemic of COVID-19). Eventually, in contrast to what it told Mr. Timm
5 initially, SCH communicated that it only wanted to utilize Periphery as a "backup" or "overflow"
6 provider of technologist services for IONM. When its services were needed, Periphery would
7 work under the professional supervision of the UW.

8 26. Given the intensity of the internal dissatisfaction with UW during the March 2020
9 meeting, Mr. Timm was surprised that SCH wanted to retain UW as its contractor. But, for
10 Periphery, the arrangement would reduce the costs of contracting with professional oversight
11 providers as well as the liability risks associated with their services, which were often significant.
12 It would also give Periphery, a new company, time to scale up its services for other contracts.
13 Mr. Timm was also looking forward to working with his former colleagues at UW.

14 27. He indicated the arrangement would be fine with Periphery, but when SCH
15 reached out to Mr. Kinney and the Chair of the Department of Rehabilitation Medicine, Dr. Peter
16 Esselman, there was no immediate response. UW subsequently communicated that it did not
17 wish to provide oversight services for Periphery's technologists, which Ms. Risley passed along
18 to Mr. Timm. Neither SCH nor anyone at UW ever explained the basis of this decision to Mr.
19 Timm.

20 28. Nonetheless, Mr. Timm began the process of seeking oversight professionals who
21 would contract with Periphery so that it could obtain the contract with SCH.

22 29. On or around September 15, 2020, Periphery and SCH entered into a formal
23 "Clinical Services Agreement for Surgical Neuromonitoring Services" (hereinafter, "the
24

Agreement”). Under the Agreement, Periphery agreed to provide “overflow” IONM services to SCH. Given UW’s refusal to collaborate with Periphery, Periphery was anticipating that it would be providing its own oversight services. But the Agreement nonetheless provided that either Periphery or SCH could provide an “Interpreting Practitioner” for procedures in which Periphery was providing the technologist.

30. In terms of qualifications, Section 2.1 of the Agreement stated:

Periphery shall be fully responsible for ensuring that each Periphery Provider providing Services [defined to mean either a technologist or Interpreting Practitioner] satisfies the following general qualifications at all times, in active and good standing status, without any restrictions, conditions, suspensions, reprimands, sanctions or disciplines (summarily or otherwise): (i) valid and unrestricted licensure, accreditations, certifications, and clinical privileges necessary to furnish the Services at Facilities; (ii) active enrollment and eligibility with respect to all state and federal health care programs; and (iii) demonstrated competency to provide the Services in a timely, safe, and effective manner in accordance with applicable ethical and professional standards.

31. Additionally, Periphery’s providers were required to meet the “specific qualifications” set out in Exhibit A of the Agreement. In Exhibit A, Paragraph 3(a) stated, “In addition to ensuring the qualifications under Section 2.1,” Periphery technologists had to possess certain credentials.

32. Paragraph 3(b) made clear that any Interpreting Practitioner “supplied by Periphery or *Seattle Children’s* (employed or contracted) shall meet the *same* qualifications and criteria” (both italics added). Thus, among other requirements, Interpreting Practitioners (whether they were supplied by Periphery or SCH) had to meet the requirements of Section 2.1 of the Agreement, including its basic licensing and eligibility requirements “with respect to all state and federal health care programs.”

33. Section 8.3 of the Agreement stated: “The parties intend this Agreement to comply with all laws, regulations and requirements applicable to physicians, hospitals, Medicare and Medicaid participants, and healthcare professionals in general.”

34. From the execution of the Agreement to the end of the year, Periphery provided services for fifteen surgical procedures, a number that was consistent with projections between the parties. With the exception of one procedure, in which SCH provided professional oversight by one of its own neurologists, Periphery contracted for professional licensed oversight.¹

35. After years of difficulties with UW IONM services, SCH administrators and surgeons alike were very pleased with Periphery’s services and reliability. In an email to Mr. Timm, dated December 10, 2020, Dr. Ojemann wrote, “Our docs have been incredibly happy with the responsiveness and, more importantly, the quality.” In an email to Mr. Timm, dated December 14, 2020, Ms. Risley stated, “You and your team have been a savior!!!”

36. Meanwhile, during this time, the IONM services provided by UW continued to be plagued by staffing issues. In or around early January 2021, UW gave 180-day notice that it intended to terminate its own contract with SCH to provide IONM services. Accordingly, UW would only be providing such services until the summer of 2021.

37. On or about January 14, 2021, Ms. Risley contacted Mr. Timm and asked if Periphery would expand its role so that it was providing all such IONM services. Mr. Timm confirmed that Periphery would be willing to take on this larger role at the Hospital. Because a provision of the Agreement precluded the parties from terminating the contract and entering into

¹ Eventually, Mr. Timm was able to secure a contract with Real Time Neuromonitoring Associates (“RTNA”), the leading national telemedicine practice group.

1 an agreement that was “substantially the same” during the first year of the Agreement, Periphery
2 continued to provided services under the Agreement.

3 **Mr. Timm Discovered and Reported That UW’s Ph.D. Oversight Providers Were**
4 **Unlicensed and Providing Oversight Services in Violation of State Law.**

5 38. Shortly thereafter, on or about January 21, 2021, UW notified SCH that it could
6 not even cover the majority of its remaining scheduled IONM procedures during the 180-day
7 contract termination period, effectively defaulting on its contract with the Hospital. As a result,
8 many of the procedures scheduled for UW were transitioned to Periphery much sooner than
9 anticipated.

10 39. As cases were abruptly transitioned, a few SCH surgeons insisted on continuing
11 to use the UW providers for oversight rather than having Periphery contract with its oversight
12 providers. A group of otolaryngology surgeons, including Randall Bly, MD; John Dahl MD; and
13 Jonathan Perkins, DO (who was also Chief of the Vascular Anomalies Program), were
14 particularly adamant, as was Samuel Browd, MD, a neurosurgeon. Dr. Ojemann (Surgeon in
15 Chief, SCH) supported the position of these surgeons, expressing a desire to use the UW’s
16 oversight services for select surgical procedures in which having an onsite person was “ideal.”

17 40. This position was bizarre. For one thing, to this point the UW providers had
18 refused to collaborate with Periphery by providing oversight services. For another thing,
19 although most of Periphery’s oversight providers were not located in Seattle but provided their
20 services remotely (which was entirely consistent with the industry standard), there was no benefit
21 to having oversight providers “on site” for specific procedures.

22 41. The otolaryngology cases at issue were typically “single-modality”
23 (electromyography) procedures, as compared with the “multi-modality” procedures used in
24 surgeries involving complex brain tumors. Yet, the neurosurgery team at the Hospital had been

1 using Periphery (and its contracted oversight providers) for complex brain tumors since the
2 previous October (2020) without incident. Moreover, from his experience working at UW, Mr.
3 Timm knew that the UW Ph.D.'s themselves did 90% of their own interpretation and supervision
4 cases remotely and were typically only on-site for more complicated procedures.²

5 42. Mr. Timm explained these points to SCH, but he encountered strong resistance,
6 and it became clear that the Hospital would require Periphery to provide technologist services
7 with the UW Ph.D.'s as the professional oversight providers.

8 43. When Mr. Timm initially agreed to have Periphery provide more than "overflow"
9 technologist services, he was not aware that in some cases the UW Ph.D.'s would be providing
10 this oversight. He became concerned about the risks of the arrangement since Periphery had
11 agreed to provide technologist services subject to *lawful* oversight; he was also concerned about
12 potential liability to Periphery in this arrangement.

13 44. Mr. Timm had a sense of the regulatory and compliance aspects of the
14 professional oversight function since he had looked into them when he was negotiating with
15 RTNA in the fall of 2020. Now, as a matter of prudence, he felt that he should make further
16 inquiries and verify that the UW Ph.D.'s had the necessary qualifications and credentials to
17 provide professional oversight to the technologists in his own company.

18 45. As he began to discuss the issue with industry colleagues and did his own
19 research, he came to realize something very disturbing. He discovered that the UW Ph.D.'s were
20

21
22 ² More generally, it would typically be incomprehensible for a contractor to give 180-day
23 notice of termination for an agreement, default on it less than two months later, and still be
24 allowed to continue a business relationship in any capacity. The incident worried Mr. Timm, as
it suggested the influence that physicians affiliated with UW, including the otolaryngologists,
had over decisions at SCH.

1 not authorized by the State of Washington to provide the services they were providing and, in
2 fact, were providing them in violation of state law.

3 46. Washington state law states that “[n]o person may practice or represent himself or
4 herself as practicing medicine without first having a valid license to do so.” Wash. Rev. Code §
5 18.71.021. State regulations provide for such licensing through the Washington Medical
6 Commission. Wash. Admin. Code § 246-919-010 *et seq.* Washington law states that a person is
7 engaged in the practice of medicine if he or she “[o]ffers or undertakes to diagnose, cure, advise,
8 or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition,
9 physical or mental, real or imaginary, by any means of instrumentality.” Rev. Code Wash. §
10 18.71.011.

11 47. Oversight providers are engaged in the practice of medicine because they make
12 autonomous clinical decisions to diagnose injuries to and ailments in a patient’s neural structure
13 occasioned by surgery, and make treatment recommendations to avoid, address, and cure those
14 injuries and ailments by advising a surgeon and other licensed physicians. In simplest terms,
15 they diagnose an anesthetized patient’s neurological status during surgery and advise surgical
16 staff based on those diagnostic interpretations. They also independently author clinical reports
17 on their intraoperative findings and oversee technologists.

18 48. The interpretation of IONM studies is analogous to radiology, in which licensed
19 physicians (typically radiologists) diagnose and make treatment recommendations to other
20 physicians by interpreting radiological studies performed by non-physician technical personnel.
21 One critical difference, however, is that interpretation of IONM diagnostic studies occurs in real-
22 time during surgery.

1 49. The conclusion that the interpretation and supervision of IONM is the practice of
2 medicine is consistent with the opinions of other regulatory and professional bodies. The
3 American Medical Association (“AMA”) has determined that the “supervision and interpretation
4 of intraoperative neurophysiologic monitoring constitutes the practice of medicine.” AMA
5 Policy H-410.957. Although the AMA policy states that this practice “can be delegated to non-
6 physician personnel who are under the direct or online real time supervision of the operating
7 surgeon or another physician trained in, or who has demonstrated competence in,
8 neurophysiologic techniques and is available to interpret the studies and advise the surgeon
9 during the surgical procedures,” the UW Ph.D.’s were *never* under the supervision of the SCH
10 operating surgeon or of any physician at UW (whether trained or competent in neurophysiologic
11 techniques) while they provided oversight services.

12 50. Additionally, further substantiating that the UW Ph.D.’s were engaged in the
13 “practice of medicine,” the FDA had approved the devices used by the technologists at Periphery
14 (and SCH) as Class II devices with a “prescription use” designation, meaning that they could
15 only be used under the supervision of a licensed provider. *See* 21 C.F.R. § 801.109 (defining
16 “prescription device” as a “[a] device which, because of any potentiality for harmful effect, or
17 the method of its use, or the collateral measures necessary to its use is not safe except under the
18 supervision of a practitioner licensed by law to direct the use of such device”).

19 51. Although they were engaged in the practice of medicine, none of the UW Ph.D.’s
20 held licenses to practice medicine in the State of Washington.

21 52. The State of Washington does provide numerous “exemptions” for healthcare
22 activities whose roles otherwise fall into the broad definition of practicing medicine. This
23 includes dentists, chiropractors, podiatrists, nurses, physician assistants, medical students, and
24

1 medical residents, among others. Rev. Code. Wash. § 18.71.030. The State authorizes and
2 carefully defines the “scope of practice” for these healthcare activities.

3 53. In the State of Washington, as in a number of other states, the only other
4 healthcare professional for whom the supervision and interpretation of IONM is within the scope
5 of practice is a licensed audiologist. *See* Wash. Admin. Code § 246-828-095. The State has not
6 provided a scope of practice for doctorates of philosophy (Ph.D.’s) to provide the professional
7 component of intraoperative monitoring.

8 54. For years, Mr. Timm had trusted that the UW would be complying with all state
9 and federal laws and regulatory requirements. He had known that the UW Ph.D.’s were not
10 licensed as medical doctors but had been under the impression that they still had a lawful scope
11 of practice under Washington laws and regulations, which it now became apparent they did not.

12 55. He had also been under the impression that the UW Ph.D.’s were “board
13 certified” and that such certification provided the necessary authority or permission for UW
14 Ph.D.’s to provide professional oversight. But Mr. Timm now came to understand that
15 certifications, even if the Ph.D.’s had them – were not a substitute for a state license or defined
16 scope of practice.

17 56. The American Society of Neurophysiological Monitoring (“ASNM”) is the
18 largest worldwide organization dedicated to the scientifically-based advancement of IONM. Its
19 *Guidelines for Supervising Professionals* restates the AMA Policy that that the supervision,
20 interpretation, and intervention in IONM constitutes the practice of medicine, and that
21 supervising professionals must comply with state law concerning scope of practice and licensure.
22 The Guidelines provide that “board certification” is also necessary, and should be secured within
23 seven years of beginning practice. Board certification for supervising professionals is provided
24

through the American Board of Neurophysiological Monitoring (“ABNM”), which awards the Diplomate of ABNM (or the “DABNM”).

57. Even if this board certification was a substitute for a proper license and scope of practice, when Mr. Timm attempted to confirm that the U.W. Ph.D. providers had this certification, he discovered that none of them had an active certification.

58. For Mr. Timm, this glaring lack of qualifications raised an additional concern. Mr. Timm knew the UW Ph.D.’s were providing services at hospitals that did a significant amount of billing to government payors such as Medicare and Medicaid (known as “Apple Health,” in the State of Washington).³ However, since the UW Ph.D.’s were unlicensed and otherwise lacked a scope of practice, their services were not eligible for reimbursement under the requirements of the Centers for Medicare and Medicaid Services (“CMS”).

59. If IONM services are not furnished in accordance with CMS regulations and local coverage determinations (“LCD’s”), then CMS does not consider the service “medically necessary” and does not reimburse for the service. *See* 42 C.F.R. § 410.32; *see also* 42 C.F.R. § 482.11(c) (noting that a participating hospital “must assure that personnel are licensed or meet other applicable standards that are required by State or local laws”).

60. Under relevant LCD’s for the State of Washington going back twenty years, IONM oversight services must be performed by a licensed physician. *See, e.g.*, LCD L14726

³ Although SCH treated pediatric patients, it was a “participating” hospital under Medicare since it treated patients qualifying as disabled under the federal healthcare system. In 2022, it billed more than \$35 million to Medicare. Additionally, it billed more than \$1.5 billion to Medicaid. The other hospitals for which the UW Ph.D.’s provided IONM oversight services, UWMC and Harborview, billed more than \$2 billion to Medicare and more than \$1.5 billion to Medicaid, collectively. Both SCH and UW utilized professional billing services through their respective physician groups, Defendant UWP and Defendant CUMG. Both groups have been the subject of allegations of Medicare fraud in the past.

(Sensory Evoked Potentials and Intraop Neurophysiology Monitoring). Additionally, because many private payors look to CMS regulations in determining their own reimbursement policies, it was clear to Mr. Timm that any billing for these services to private payors was likely unjustified and fraudulent, as well.

61. In sum, the UW Ph.D.'s lacked necessary licenses and scopes of practice under state law and regulations; federal law and regulations; and as defined through policies of CMS and private insurance companies relating to billing practices.⁴

62. It appeared to Mr. Timm that the UW Ph.D.'s had been internally "qualified" as though they were attending physicians. Hospital administrators had indicated to Mr. Timm that the Ph.D.'s were "credentialed" through the Medical Staff Office (even though Hospital bylaws state that any member of the Medical Staff must be "legally licensed to practice in the State of Washington"). They were also often characterized as "physicians."

63. Within the UW electronic medical records system, for instance, they were classified as "attending physicians." On the surgical whiteboard in the operating room, they were listed as "SCM [Spinal Cord Monitoring]-MD." Even when they received their parking passes, the letter stated, "Dear Physician."

64. Over the course of the coming months in 2021, Mr. Timm, on behalf of himself, Mr. Wiman and Periphery, conveyed his concerns regarding the lack of qualifications of the UW Ph.D.'s to SCH surgeons, administrators at the SCH, including the operating room director and clinical strategic sourcing manager, and to the Surgeon-in-Chief (who became the Chief Medical Officer) of the Hospital.

⁴ Additionally, two of the Ph.D.'s in the program, Robert Holdefer and Vicente Martinez, held Ph.D.'s in psychology and biopsychology, respectively, research-oriented degrees far removed from the field of surgical neurophysiology.

65. Despite Mr. Timm's disclosures, SCH surgeons and physician leadership insisted on continuing to use oversight providers who were not properly authorized under state law to provide the services they were providing.

66. Thus, on February 2, 2021, Mr. Timm sent an email to Joanna Garrison, Manager of Surgery Coordination (copying Ms. Risley), stating that Periphery was willing to cover an upcoming procedure that UW technologists were no longer able to staff, but he wanted to use a licensed oversight provider from Periphery (i.e., a neurologist contracted through RTNA). He sent an email to the surgeon, Dr. Jonathan Perkins, stating the same thing. Knowing the preference of Dr. Perkins for the UW Ph.D.'s, and attempting to accommodate him, Mr. Timm offered to allow the UW Ph.D. on the case (Mr. Kinney) to join the procedure on-site but not have him interpret, oversee, or author the resulting report.⁵ Dr. Perkins responded simply by stating that Mr. Kinney was scheduled on the case and asking Mr. Timm to coordinate with Mr. Kinney.

67. On February 4, 2021, Mr. Timm discussed the licensing and qualification issues with Dr. Perkins in person, but Dr. Perkins was adamant that the procedure would not be possible without the UW Ph.D.'s as they offered on-site interpretation. During the conversation, Dr. Perkins become visibly frustrated and angry with the recent transition of IONM services from the UW providers.

68. Although Mr. Timm and other Periphery providers, including Mr. Wiman, were concerned with the medicolegal risk of having the Ph.D.'s provide oversight, Periphery tried to be sympathetic to the impact that the abrupt departure of UW's IONM service was having on

⁵ Mr. Timm thought the UW Ph.D.'s could serve in the role of an "advanced" technologist, given that they had graduate level coursework in anatomy and physiology, which most technologists did not.

1 surgeons accustomed to working with the UW oversight providers, as well as to the difficulty
2 everyone was experiencing transitioning so many cases in such a short period of time.

3 69. Mr. Timm and Mr. Wiman did their best to mitigate the issues in the short-term so
4 that they would not impact patient care. They decided that Mr. Timm, one of Periphery's most
5 experienced technologists, would handle the first procedures involving Ph.D. oversight, in hopes
6 of managing and addressing any barriers to the delivery of service. Mr. Timm and Mr. Wiman
7 agreed that the best path forward was to continue to educate the leaders at SCH on the issues
8 pertaining to the oversight of the Ph.D.'s, while continuing to deliver excellent IONM services.

9 70. To that end, during discussions of the expanded services, Mr. Timm provided Sue
10 Teodecki, SCH's Clinical Strategic Sourcing Manager, a highlighted copy of the ASNM
11 *Guidelines for Supervising Professionals*, which referenced AMA Policy H-410.957 and clearly
12 defined the interpretation and supervision of IONM as being the practice of medicine, and stated
13 that oversight providers should comply with state law regarding scope of practice and licensure.

14 **Periphery Staff Witnessed and Reported Patient Safety Concerns Relating to Professional**
15 **Oversight Services Provided By the UW Ph.D.'s.**

16 71. As Periphery began to work with the UW oversight providers, it became clear that
17 the issue of licensing and qualifications was more than an abstract legal or regulatory concern.
18 Periphery staff witnessed multiple incidents in which the conduct or actions of the UW Ph.D.'s
19 threatened the safety of pediatric patients at SCH.⁶

20 72. On or about February 2, 2021, Mr. Timm contacted Mr. Kinney to coordinate a
21 care plan for the procedure (referenced above) with Dr. Perkins scheduled for February 4. In his

22
23 ⁶ SCH physicians also complained with some regularity that pediatric patients had been
24 injured during surgeries in which the UW Ph.D.'s role was involved.

1 response, Mr. Kinney confused two (critical) branches of the facial nerve, the temporal and
2 zygomatic branches, believing they were the same thing.

3 73. Prior to the procedure, Mr. Timm was able to clarify with Dr. Perkins that the
4 mass was primarily impacting the temporal branch and thus recommended which facial muscles
5 should be mapped for the procedure, thus avoiding any impact to patient care. The incident with
6 Mr. Kinney, however, troubled Mr. Timm, as did the faith that the Otolaryngology surgeons
7 seemed to have in the UW oversight providers.

8 74. On or about March 1, 2021, Mr. Timm reached out to Mr. Kinney regarding a
9 procedure (the resection of a mass) scheduled for March 5 with Dr. Dahl. The next day, Mr.
10 Kinney provided a care plan that suggested the spinal accessory nerve (“CN XI”) was involved,
11 even though the hypoglossal nerve (“CN XII”) was actually near the mass. On the day of the
12 procedure, Mr. Timm discussed the issue with Dr. Dahl, who agreed that the spinal accessory
13 nerve was nowhere near the mass.

14 75. Additionally, on the day of the procedure, Vicente Martinez, the assigned UW
15 oversight provider, did not come into the operating room until 8 a.m., even though the procedure
16 was scheduled to begin at 7:30 a.m. Once the procedure was underway, Mr. Martinez informed
17 Mr. Timm that he had to go to University of Washington Medical Center for a procedure and
18 abruptly left the room at 8:31 a.m. When Mr. Timm questioned that decision, which left Mr.
19 Timm without proper oversight, it became clear that Mr. Martinez had no plans to transfer his
20 duties to another oversight provider. Thus, Mr. Timm was forced to monitor the rest of the
21 procedure alone without oversight. Fortunately, there was no impact to the patient, and the
22 procedure was completed without complication. Afterwards, Mr. Kinney attempted to blame
23 this incident on Mr. Timm, asking him to remind Mr. Kinney one day before procedures on
24

1 which a UW Ph.D. would be providing oversight, ignoring the fact that Mr. Kinney and Mr.
2 Timm had exchanged emails regarding the procedure in the days leading up to it.

3 76. On or about March 7, 2021, Mr. Timm emailed his concerns about these incidents
4 to Ms. Risley. At the outset, he noted: “As we’ve discussed, the UW oversight team is non-
5 clinical PhD providers without neurophysiology credentials (DABNM, CNIM), so there is
6 considerable risk for SCH to continue utilizing their services without an appropriately licensed
7 provider as the attending.” Mr. Timm noted that in the three procedures where the UW Ph.D.’s
8 had provided oversight to Periphery technologists, two had involved “questionable care plans.”
9 He then documented the incidents surrounding the February 4 and March 5, 2021 procedures.

10 77. He added, “I know the topic of UW oversight is sensitive for a few of the
11 surgeons at SCH, but I believe this is a good time to evaluate their practices and determine if [the
12 Ph.D.’s] are truly bringing adequate patient care to Seattle Children's Hospital.”

13 78. On or about March 8, 2021, Ms. Risley forwarded Mr. Timm’s concerns to
14 Rachel VanDeMark, SCH’s Director of Surgical Quality Programs. (Ms. VanDeMark was in
15 charge of the surgical facility’s Quality Improvement (“QI”) program.) Ms. Risley wrote, “Don
16 has great ideas to improve provider awareness of neuromonitoring and improve our situation. As
17 we stand now, we are primed for serious patient harm.”

18 79. A few weeks later, Ms. VanDeMark informed Mr. Timm that she had shared his
19 concerns with internal colleagues, and she would follow up with him. Although she thought a
20 video conference would be scheduled, the conference was never held (or, if it was, Mr. Timm
21 was not invited to participate). Instead, on or about March 9, 2021, Dr. Ojemann called Mr.
22 Timm to discuss his concerns.

1 80. Neither Dr. Ojemann nor anyone at SCH, however, provided Mr. Timm a
2 response to the extensive report he had made regarding the licensing and conduct of the UW
3 Ph.D.'s, and the related patient-care issues.

4 81. Despite Mr. Timm's repeated requests to discuss the issues further, SCH would
5 not provide a substantive response to these issues for a period of fifteen months.

6 82. As the Hospital delayed in addressing Mr. Timm's concerns, the UW oversight
7 providers continued their practice of leaving the operating room during procedures. Following a
8 similar incident in which another UW Ph.D., Robert Holdefer, left the operating room during a
9 procedure to do some other work, Mr. Wiman informed him that he needed to remain in the
10 operating room to provide oversight.

11 83. On or about April 12, 2021, Mr. Kinney wrote an email to Mr. Timm complaining
12 about the incident. In the email, he acknowledged that Periphery had "specific standards to
13 maintain" but stated that because of its ongoing contract issues with SCH, his group was not
14 always being paid for its oversight services, and even when it was, his group could not "commit
15 to being on site for the entire case in many instances since we frequently will have other
16 obligations, including cases within our system to attend as well as meetings and teaching, etc."
17 (Mr. Kinney also referred to the fact that Dr. Ojemann wanted the UW Group to provide
18 oversight for all cases at SCH and noted that UW may be billing for these procedures.)

19 84. Mr. Timm was astounded that the Director of the UW program would take the
20 position that UW Ph.D.'s did not have to be physically present for the duration of the procedures
21 in which they were providing oversight since both the AMA Policy, and CMS and ASNM
22 Guidelines require "direct" and "real time" supervision for the duration of a surgical procedure.

1 85. Mr. Timm forwarded the email to Ms. Risley and Ms. VanDeMark. He wrote,
 2 “Please include this with my initial concern as it directly relates to the UW PhDs.” He noted, “I
 3 cannot have my team exposed without oversight and Greg doesn’t appear interested in providing
 4 the actual oversight component.” Mr. Timm also stated:

5 At the end of the day, it’s the patient who loses when oversight is unwilling to
 6 cover a procedure based on remuneration/ongoing contract discussions. I cannot
 7 speak to Dr. Ojemann’s purported goal of bringing the PhD team back as
 8 oversight for interpretation of all cases, but given my experience in collaborating
 with the UW so far it would be unwise. There has been almost no pre-planning of
 procedures that are being considered complex and what is practiced often has no
 evidence basis in peer-reviewed literature.

9 86. He added, “I look forward to addressing this topic in further detail.” But the
 10 leadership of SCH offered no response to these concerns.

11 87. While the hospital refused to act, patient care issues involving the UW Ph.D.’s
 12 continued, in some cases resulting in injuries to patients, which were confirmed by SCH
 13 physicians. For example, on or about April 26, 2021, Mr. Timm was present when Dr. Elaine
 14 Tsao, a pediatric rehabilitation specialist, visited the operating room and asked Dr. Samuel
 15 Browd, a neurosurgeon, why patients undergoing a Selective Dorsal Rhizotomy (“SDR”), a
 16 procedure that reduces spasticity in the legs of children with cerebral palsy, were experiencing
 17 postoperative bladder dysfunction. Dr. Browd directed the question to Mr. Kinney, who stated
 18 there was nothing he could do from the IONM standpoint to reduce the incidence of this
 19 problem, an answer that Mr. Timm knew to be wrong.

20 88. All peer-reviewed publications on SDR procedures (including publications
 21 written by the UW Ph.D.’s) noted that the nerve roots responsible for bowel, bladder, and sexual
 22 function should be kept intact whenever they could be identified through electromyography
 23 (“EMG”) testing, a technique of IONM. After Mr. Kinney left the operating room, Mr. Timm
 24

described this methodology to Dr. Browd. The following day, Mr. Timm wrote a follow-up email to Dr. Browd, attaching peer-reviewed publications and information on advanced monitoring modalities that confirmed the points he had made.

89. Despite this state of medical knowledge, on multiple occasions, Periphery technologists witnessed Mr. Kinney make incorrect interpretations of EMG studies that led him to recommend to Dr. Browd that the vital nerve roots be “cut” (i.e., partially sectioned), impairing bladder and other functions.

90. When Mr. Timm reported this recurring issue to Ms. Risley, she encouraged Mr. Timm to discuss with Dr. Browd regarding the use of licensed professionals for these procedures. Before approaching Dr. Browd, Mr. Timm spoke with Gene Balzer, the CEO of RTNA (Periphery’s primary physician oversight contractor), who offered the possibility of having one of RTNA’s neurologists (who lived fifteen minutes away from SCH) provide on-site oversight services for these procedures. Mr. Balzer also suggested a collaborative multi-center research project to share methodologies and data to improve outcomes. When Mr. Timm approached Dr. Browd with these ideas, he curtly responded, “Not unless Greg Kinney gets hit by a bus.”

91. Surgeons in leadership positions at SCH were aware of the post-operative SDR injuries. On or about June 10, 2021, Dr. Suzanne Yandow, an orthopedic surgeon and the Surgical Director for the Operating Room, wrote in an email, “We are seeing issues with post op bladder dysfunction especially in SDVR [Selective Dorsal Ventral Rhizotomy] patients.” Dr. Ojemann and Surgeon-in-Chief, Andre Dick MD were copied on the email.⁷

⁷ In April 2021, Dr. Ojemann had become the Interim Chief Medical Officer of SCH.

1 92. Months later, in October 2021, during an SDR procedure, Dr. Tsao mentioned
2 that there continued to be multiple incidents of bladder impairment following SDR procedures at
3 SCH. Other than Dr. Tsao, no one shared these negative outcomes with Periphery.

4 93. The licensing and quality-of-care issues posed by the UW Ph.D. providers
5 continued and remained unaddressed by SCH, despite Mr. Timm's repeated attempts to address
6 these issues and to bring them to the attention of administrators, physicians, and hospital leaders.
7 Mr. Timm periodically raised these issues during meetings with administrators, but he received
8 no follow up to his reports.

9 94. Even when Periphery tried to assist the UW Ph.D.'s in coordinating and providing
10 oversight services, the UW Ph.D.'s refused. After the incident with Mr. Martinez and after Mr.
11 Kinney stated that remote access could mitigate situations where the Ph.D.'s were unable to stay
12 on-site for the duration of a surgical procedure, Periphery provided the Ph.D.'s a secure way to
13 connect remotely to IONM procedures and authorized surgery schedule access in April of 2021.

14 95. Nonetheless, UW Ph.D.'s rarely took advantage of the technology. Instead, the
15 Ph.D. providers continued to arrive late and leave before the end of procedures involving IONM
16 services, and often neglected to share a monitoring plan in a timely fashion, leaving technologists
17 scrambling to accommodate the diverse needs of patients. This resulted in delayed patient care,
18 and at times frustrated the surgeons, who became impatient waiting for the Ph.D.'s to arrive. On
19 multiple occasions, surgeons asked Periphery staff to proceed without oversight.

20 96. Throughout the summer of 2021, SCH and UW were negotiating a new
21 agreement with UW for the UW Ph.D.'s to continue to provide oversight services for select
22 procedures. As part of that process, SCH and UW discussed the qualifications of the UW
23 Ph.D.'s to provide oversight services. Dr. Esselman communicated to SCH that the Ph.D.'s were
24

1 authorized to provide oversight services by virtue of the fact that they were supervised by other
2 faculty in the medical school. This position was unjustified, unlawful, and false.

3 97. Despite having its own regulatory expertise and being responsible for conducting
4 its own inquiry and verification of the licensure, qualifications, and credentialing of healthcare
5 providers at its own hospital, SCH essentially adopted Dr. Esselman's position as its own.

6 98. Additionally, around this time, Mr. Kinney approached Mr. Timm and asked to
7 speak with him. During the conversation, Mr. Kinney stated that he had never obtained any form
8 of certification because his Department Chair (Dr. Esselman) did not require it. Mr. Kinney
9 mentioned that he had considered obtaining an Audiology degree, which clearly reflected his
10 awareness of his lack of licensing and scope of practice under state law. However, he had not
11 pursued it because he had children. Mr. Kinney actually wondered if Periphery was hiring, but
12 Mr. Timm stated clearly, "I'm not going to hire anybody who doesn't have credentials." Given
13 Mr. Kinney's relative candor on the subject, Mr. Timm continued to expect some sort of
14 resolution from the Hospital on the question of Ph.D. qualifications and/or credentials, but none
15 was forthcoming.

16 99. Although the licensing and patient-care issues relating to the UW Ph.D.'s were
17 significant, the surgeries involving oversight with the UW Ph.D. team was only a small
18 percentage (approximately 10%) of the procedures on which Periphery provided IONM services.
19 By and large, SCH's surgeons were supportive and complimentary of Periphery's work.

20 100. In or about October 2021, Mr. Timm attended a meeting with Ms. Risley and
21 Kayla Reece, another Hospital administrator. Ms. Risley said that SCH was interested in
22 extending its contract with Periphery for a five-year period. (The term of the original
23 Agreement, which was twenty-four months, was set to expire on September 15, 2022.)
24

1 101. Mr. Timm was pleased that the Hospital wanted to extend the Agreement.
2 However, he was troubled by the lack of a response from the Hospital regarding the concerns he
3 had expressed about the UW Ph.D.'s. If anything, the situation with the UW Ph.D.'s seemed to
4 be getting worse. Mr. Timm said that recently he had noticed an uptick in cases in which the
5 UW Ph.D.'s were scheduled to provide IONM oversight, including in cases outside of their usual
6 otolaryngology (and rhizotomy procedures), which had created conflicts between Periphery and
7 the UW Ph.D.'s. Ms. Risley and Ms. Reece confirmed that SCH had renewed its contract with
8 UW earlier that fall but assured Mr. Timm that the Hospital was looking into his concerns.

9 102. A few weeks after the meeting, on or about November 16, 2021, an
10 otolaryngology scheduler made an "urgent" request for Periphery to provide a technologist for a
11 procedure, although the request was made three days in advance. When the technologist arrived
12 for the procedure, it became apparent that given the location of the mass involved, the IONM
13 services at issue would be of little value and, as it turned out, the anesthetic being used would
14 render the services useless anyway. When the anesthesiologist offered to use a different
15 anesthetic, the surgeon (Dr. Dahl) simply canceled the IONM services even though the Periphery
16 technologist had already gone through the set-up process and begun monitoring. Dr. Dahl stated
17 that he had not ordered monitoring in the first place. The UW Ph.D. oversight provider, who
18 arrived five minutes after the start of the procedure, could have caught any of these issues before
19 the procedure but had failed to do any pre-planning.

20 103. Pursuant to the Agreement, Periphery was allowed to bill the Hospital for the
21 procedure. The UW Ph.D. providers would also be able to seek reimbursement for their
22 services.
23
24

1 104. In an email to Ms. Reece and Ms. Risley, dated November 19, 2021, he reported
2 the incident and wrote:

3 It is my impression that we are not being utilized to help the patients, but rather
4 [to] support a tangential relationship between the OTO [Otolaryngology] group
5 and UW's neurophysiologists. If the surgeon did not request neuromonitoring
6 with UW for this procedure, it is entirely possible there is a standing order to add
7 them for all procedures falling within a certain category. From my perspective
8 there doesn't appear to be a plan to verify efficacy at the individual patient level,
9 which makes the overall utility of IOM questionable. If UW had viewed the data
10 and made a plan with the surgeon ahead of time, IOM could have been canceled.

11 As you know, I am deeply invested in this field and seek to educate and empower
12 the surgeons and staff at SCH regarding IOM and its utility, as well as its
13 limitations. I understand that mistakes in scheduling can occur, but this instance
14 had multiple layers of confirmation, including the day of. I'm putting myself and
15 company in a precarious place by bringing these issues to the forefront, but I
16 cannot with good conscience avert my eyes in favor of increased case volumes
17 and revenue.

18 105. As he pursued renewing the Agreement with SCH, the incidents involving the
19 UW Ph.D.'s continued to trouble Mr. Timm. On the basis of SCH's representations that it was
20 continuing to "investigate" the concerns that Mr. Timm had raised, Periphery participated in the
21 renewal negotiation with SCH in good faith and assumed that the Hospital would address Mr.
22 Timm's concerns as part of the contract renewal process.

23 106. The parties began to exchange drafts for a five-year contract renewal.

24 **SCH Withdrew From Contract Renewal Discussions After Periphery Asserted That the
Hospital Breached the Agreement By Failing to Provide Qualified Oversight Professionals
and to Address the Quality Improvement Issues That Mr. Timm Raised.**

 107. By late spring 2022, the parties had worked through a number of issues pertaining
to the contract renewal. However, the oversight provided by the UW's Ph.D.'s was becoming
increasingly problematic. With SCH continuing its inaction and silence regarding the concerns
that Mr. Timm had raised, patient care continued to suffer.

1 108. A particularly troubling – and yet not unusual – incident involving the UW
2 Ph.D.’s occurred on or about May 23, 2022. Mr. Kinney arrived nearly an hour late to a
3 scheduled procedure, missing all pre-procedure discussions between the healthcare providers.
4 During one of the pre-procedure safety checks, Dr. Browd noticed that Mr. Kinney was not
5 present, and a circulating nurse stated that the procedure should not begin until Mr. Kinney
6 arrived. Despite the fact that Dr. Browd was one of the physicians who preferred to use UW
7 Ph.D.’s for oversight services, he became frustrated. He claimed that it was Mr. Wiman’s
8 responsibility to ensure that Mr. Kinney was present for the procedure and blamed Mr. Wiman
9 for not telling him (Dr. Browd) that Mr. Kinney was not. Mr. Kinney finally arrived – and then
10 left the room again.

11 109. Mr. Timm provided a detailed report on the incident a few days later. Among
12 other things, he referred to billing guidelines for Medicare and Medicaid, noting, “IONM CMS
13 guidelines state . . . that continuous oversight is required once IONM commences. Greg cannot
14 leave the room once we start monitoring or needs to remotely connect in the event that our data
15 shows nerve root irritation on exposure that we must relay to the surgeon.”

16 110. In late May 2022, Mr. Timm requested a meeting with SCH to discuss this
17 incident, and to review the latest proposed draft of the renewal contract between the parties to
18 ensure there were no barriers to finalizing the agreement.

19 111. Before the scheduled meeting, yet another incident occurred. On or about June 6,
20 2022, Mr. Kinney tried to perform on-site interpretations for two surgeries occurring at the same
21 time! Even though Mr. Kinney had known of the scheduling conflict weeks in advance, he had
22 failed to arrange for adequate coverage. During the procedures, he effectively abandoned
23 oversight of one of the procedures for the other. When the Periphery technologists performing
24

1 the IONM services in the two procedures (Mr. Wiman and John Scarafiotti) raised concerns with
2 Mr. Kinney, he was dismissive of their concerns and continued to “oversee” both procedures,
3 with the support of the surgeons (Dr. Browd and Dr. Bly). Mr. Kinney had known these
4 procedures overlapped weeks in advance and failed to ensure adequate patient care and safety by
5 either scheduling another oversight provider or connecting to the procedures remotely.⁸

6 112. During the meeting the next day, on or about June 7, 2022, administrators for
7 SCH confirmed that there were no remaining obstacles to renewing the contract with Periphery.
8 However, in light of the recent incidents, particularly the one involving Mr. Kinney the previous
9 day, Mr. Timm informed the SCH administrators present that SCH was not satisfying the terms
10 of the existing Agreement (by providing qualified oversight providers), and simply had not
11 addressed the quality-of-care concerns submitted to its internal Quality Improvement (“QI”)
12 program fifteen months earlier (in or about March of 2021).

13 113. Ms. Risley encouraged Mr. Timm to invoke the contractual breach clause of the
14 Agreement in the stated hope that it would cause SCH executive leadership to (finally) take
15 Periphery’s concerns regarding the unlicensed and uncredentialed Ph.D.’s seriously. (At her
16 request, Mr. Timm also forwarded to Ms. Risley documentation supporting the concerns he had
17 raised.)

18 114. Accordingly, on or about June 14, 2022, under Section 6.3 of the Agreement,
19 Periphery served a breach of contract notice to SCH. (Section 6.3 provides that if a party
20 commits a material breach of the Agreement and fails to correct the breach within ten days of
21

22 ⁸ Typically, when done remotely, it is acceptable to oversee up to three procedures
23 involving IONM simultaneously. But Kinney refused to connect remotely using the access that
24 Periphery had offered to provide.

1 receiving written notice from the non-breaching party, the non-breaching party may terminate
2 the Agreement.)

3 115. The breach notice referred to the Agreement, which required SCH to provide an
4 “Interpreting Practitioner” to oversee certain procedures, and stated that the practitioners SCH
5 had provided (i.e., the UW Ph.D. group) did not meet the standards required by the Agreement.
6 The notice also stated that the practitioners failed to provide continuous direct oversight of
7 IONM services, arrived late to scheduled procedures, and/or failed to collaborate with Periphery
8 in the delivery of “safe, timely, and effective patient care.” The notice referred to the June 6,
9 2022 incident involving Mr. Kinney. Periphery also attached more than fifty pages of
10 documentation confirming the quality-of-care issues that had arisen, as well as professional
11 guidelines pertaining to the relevant standard of care.

12 116. Periphery requested that SCH provide proof of qualifications for each Interpreting
13 Practitioner supplied by the Hospital, as set forth in Section 3(b) of Exhibit A to the Agreement.
14 Periphery stated that it would continue to comply with the terms of the Agreement but requested
15 an immediate remedy of the breaches set forth in the notice, including the provision of “adequate
16 assurance that any Interpreting Practitioners supplied by Children's pursuant to the Agreement
17 meet the qualification and behavioral standards set forth therein.”

18 117. On or about June 22, 2022, SCH’s Chief Medical Officer, Dr. Ojemann, called
19 Mr. Timm to discuss the matter. During the call, Dr. Ojemann stated that going forward only
20 Periphery oversight providers would be utilized for procedures in which Periphery technologists
21 were providing monitoring services. Dr. Ojemann confirmed this position in a formal letter
22 dated July 1, 2022 (but delivered on or about July 7, 2022).

1 118. Mr. Timm then received an email from Mr. Kinney, in which he stated, “I just
2 found out about your work at getting us removed from SCH as oversight for the cases we have
3 been participating in. To put it mildly, I am shocked.” Mr. Kinney then accused Mr. Timm and
4 Periphery of engaging in “a conscious effort . . . to undermine our position at SCH.”

5 119. That Mr. Kinney would be “shocked” to learn that Mr. Timm had reported
6 quality-of-care concerns about the UW Ph.D.’s was itself shocking to Mr. Timm, who had first
7 reported these issues more than a year earlier. Since Mr. Kinney was the Director of the UW
8 Ph.D. program and himself one of the oversight providers about whom Mr. Timm had expressed
9 concerns, it was apparent that SCH had never investigated Mr. Timm’s reports through its QI
10 program.

11 120. Mr. Kinney’s claim that he was unaware that Periphery had patient care issues
12 with him and his Ph.D. team was also disingenuous, given Mr. Kinney’s email the previous April
13 2022 regarding the dispute over whether the Ph.D. had to be present for the entire duration of
14 IONM procedures. Mr. Timm and Mr. Kinney had also exchanged throughout the previous year
15 (2021) relating to the availability (and unavailability) of UW Ph.D.’s for certain procedures.

16 121. Moreover, Periphery staff had addressed Mr. Kinney for unacceptable oversight
17 practices only two weeks prior to this email.

18 122. Mr. Timm considered Mr. Kinney’s email to be a form of harassment for his
19 good-faith reporting of serious compliance and patient care issues by the UW Ph.D.’s.
20 Accordingly, he forwarded the email to Dr. Ojemann and requested that SCH take remedial
21 action against Mr. Kinney in accordance with SCH Bylaws. No action was ever taken.

22 123. SCH’s response to the notice of breach, including its “cure” – i.e., that the UW
23 Ph.D. providers would not be providing oversight services in cases that Periphery was supporting
24

1 – was inadequate. For one thing, in his response, Dr. Ojemann did not even acknowledge or
2 address Periphery’s request for proof of the qualifications of the UW Ph.D.’s. Moreover, he did
3 not address the troubling behavior of the UW providers, or the legal and regulatory issues posed
4 by their lack of qualifications and credentials.⁹ Indeed, he simply ignored those issues and
5 treated the problems with the UW Group as though they related primarily to “coordination” and
6 “scheduling.” The letter also failed to acknowledge that Periphery’s complaints had been
7 submitted to the QI program a year earlier without any follow up, let alone remediation or
8 resolution, from SCH.

9 124. During the interim between the exchange of correspondence relating to the
10 breach, Periphery continued to provide IONM services as contractually obligated, and did not
11 interact with the UW Ph.D.’s. Nonetheless, Periphery technologists encountered hostility and
12 retaliation from SCH surgeons. Dr. Perkins, for instance, refused to work with Periphery, but he
13 nonetheless visited the operating room during one of the procedures that Dr. Dahl did with
14 Periphery. Dr. Perkins was visibly angry, crossed his arms, and hovered over Mr. Timm and Mr.
15 Wiman as they attempted to work.

16 125. On or about July 25, 2022, Ms. Risley confirmed that SCH’s legal team was
17 updating the latest draft of the contract to remove a provision allowing UW’s Ph.D.’s to provide
18 oversight services for Periphery’s technologists. Ms. Risley stated that she expected to have
19

20 ⁹ In short order, it would become obvious that Dr. Ojemann was simply going to ignore
21 these larger problems, and any notion that SCH was going to “remove” the UW Ph.D.’s from
22 providing oversight services (as Kinney claimed) was exaggerated. Within weeks of the breach
23 notice, SCH simply brought in a different contractor to provide technologists to work on cases
24 with the UW Ph.D.’s. Attesting to the influence of UW leadership in this decision, the contractor
was Specialty Care, who provided “overflow” technologist services at University of Washington
Medical Center (and related facilities) pursuant to a cumulative 7-year, sole source contract with
the University of Washington.

1 something for Mr. Timm within a couple of weeks and noted that SCH's legal team was aware of
2 the contract expiration date of September 15, 2022.

3 126. After all of the issues with the UW Ph.D.'s, Mr. Timm was relieved that under the
4 new contract there would be no issues of the UW Ph.D.'s providing oversight services for cases
5 involving Periphery. But he was still worried that SCH had not responded to any of the other
6 concerns he had raised, and that SCH was still allowing UW Ph.D.'s to provide oversight
7 services despite their lack of proper licensing and qualifications.

8 127. On or about July 27, 2022, Periphery provided a formal response to SCH's letter
9 of July 1, 2022. It reminded SCH that the Agreement required both parties "to comply with
10 applicable federal and state rules, CMS guidelines, professional standards of care, and [SCH]
11 Bylaws," which "includes clearly delineated qualifications for interpreting oversight providers,"
12 as set forth in the Agreement. Periphery cited the American Medical Association's policy stating
13 that interpretation and oversight of IONM constituted the practice of medicine and noted that
14 Washington law and regulations only allowed physicians and Audiologists to perform IONM
15 oversight. The letter stated, "If Seattle Children's Hospital believes Periphery's understanding is
16 incorrect or incomplete, we ask that you educate us." The letter then detailed the dangerous
17 pattern of conduct on the part of the UW Ph.D.'s, and how it had become normalized over the
18 years at SCH, even though it was grossly inconsistent with relevant standards of care, which the
19 letter also detailed.

20 128. Periphery's letter stated that the proposed "remedies" set forth in SCH's response
21 to the breach notice "do not yet address the issues listed," as the UW providers had failed to meet
22 the qualifications and standard of care minimums set forth in the Agreement. Moreover, the
23 letter stated, "using another technical provider [i.e., Specialty Care] to continue with UW
24

oversight does not address the standard of care lapses.” Periphery reminded SCH that it was “professionally and ethically bound” to see these concerns were “taken seriously and dealt with constructively.”

129. In closing, Periphery’s letter stated, “It is our desire to continue supporting Seattle Children’s Hospital.” Consistent with that goal, Periphery requested that SCH provide a cure to the breach “that addresses and ensures all UW providers will obtain DABNM certification in accordance with the current national guidelines” and “that addresses and ensures all UW providers will adhere to all ASNM guidelines pertaining to oversight to ensure patient safety and the standard of care is met or exceed[ed] as in accordance with Facility Bylaws.”

130. After the July 27, 2022 correspondence, Mr. Timm heard nothing about the new contract for weeks. On August 24, 2022, he reached out to Ms. Risley to check on the status of the renewal. Two days later, Ms. Risley replied, claiming that SCH’s legal team was continuing to work on the contract. Ms. Risley also stated that she had asked Casey McFarland, the new Business Director for Perioperative and Surgical Services, to work with Whitney Murphy, Vice President of Surgical Services, to determine issues related to the contract.

131. Ms. Risley’s statement was odd since both Ms. McFarland and Ms. Murphy were out on leave (and, in fact, did not contact Mr. Timm even though Ms. Risley had requested that they do so). Additionally, the “issues” that Ms. Risley mentioned, including “coverage needs” and “length of [the] contract,” had been discussed and agreed to by the parties (including SCH’s physician leadership) in early 2022 and long since been incorporated into earlier versions of the agreement.

132. Worried that SCH was revisiting contract issues and potentially backing out of the renewal contract, Mr. Timm sent Ms. Risley an email the same day, expressing his frustration

1 with how SCH was drawing out the contract renewal and failing to address the issues at the heart
2 of the breach notice. He noted, “[I] see SCH is willing to gamble by bringing in a second vendor
3 and continuing to utilize the unlicensed / non-credentialed PHD oversight.” Mr. Timm
4 summarized what Periphery had endured to date, including being “forced to utilize unqualified
5 oversight providers” who were unwilling to meet minimum standards of care, and hoped “that
6 someone [at SCH] engages at a meaningful level soon.”

7 133. On or about August 31, 2022, Periphery received a letter (dated August 30, 2022)
8 from SCH, in which the Hospital responded to the July 27, 2022 letter and August 26, 2022
9 email Mr. Timm sent to Ms. Risley. In the Hospital’s first-ever substantive response to the
10 concerns Mr. Timm had expressed seventeen months earlier, Dr. Ojemann made a number of
11 false and/or unjustified claims.

12 134. First, Dr. Ojemann claimed that the Hospital had “thoroughly” reviewed the cases
13 that Mr. Timm identified in March 2021 “as part of [its] quality improvement program” and that
14 the neuromonitoring services were provided “competently and safely,” even though (1) there was
15 no evidence that such a review had ever occurred; (2) the Hospital had never asked Mr. Timm to
16 provide information regarding such a review, and (3) the Hospital had never provided the
17 findings of such a review. Nor had anyone at SCH mentioned that such a review had taken place
18 in the seventeen months that the matter had been pending.

19 135. Dr. Ojemann made the baldly false claim that these findings of the review had
20 been “previously relayed” to Periphery, which they had not been. Mischaracterizing Periphery’s
21 position, Dr. Ojemann also wrote: “However, we agree that going forward the oversight provider
22 must be ‘continuously available’ to perform interoperative responsibilities during an active
23 procedure.” This standard of care – i.e., that the UW providers be “continuously available” –
24

1 was at odds with every applicable standard of care, which requires “real time interpretation” of
2 IONM data for the duration of a medical procedure. It was also at odds with Section 3(a) of the
3 Agreement, which requires every surgical neurophysiologist from Periphery to work “at all
4 times” under the direction and supervision of an Interpreting Practitioner.

5 136. Second, with regard to the Ph.D.’s qualifications, the Hospital took the position
6 that the Ph.D.’s did not need credentials, as the providers were “sufficiently qualified given their
7 academic setting and participation in industry education, teaching, and research.” Thus, Dr.
8 Ojemann essentially parroted, without any support, the position that UW (through Dr. Esselman)
9 had taken with regard to its Ph.D.’s the previous summer. This position was not only unjustified,
10 unlawful, and false, but also illogical, in that it would allow any Ph.D.-level faculty member at
11 UW to practice medicine, which was wildly inconsistent with State and federal laws pertaining
12 to the practice of medicine and licensed medical professions. (A Ph.D. in chemistry could
13 practice anesthesia or a Ph.D. anatomist could operate in surgical procedures, for instance, since
14 these doctorates teach and perform research in these related fields.)

15 137. Although Dr. Ojemann noted that “peer organizations” did not require such
16 credentials, he provided no such examples. Dr. Ojemann’s further claim that SCH respects the
17 “independent professional judgment of surgeons who prefer to work with” the UW providers
18 was simply non-responsive as to the issue of the qualifications of those providers, and ignored
19 the possibility that the surgeons were aiding and abetting the unlicensed practice of medicine by
20 those providers. Rev. Code Wash. § 18.130.180(10).

21 138. Dr. Ojemann provided no explanation as to how the UW Ph.D. providers were
22 licensed under state law, as required by Section 2.1 of the Agreement and Paragraph 3 of Exhibit
23 A to the Agreement. The letter also stated that the current Agreement does not require the
24

1 Ph.D.'s to hold certification through DABNM because the process for obtaining credentials at
2 the Hospital "may" include such certification, which was a misreading of the Agreement. SCH
3 provided no evidence or laws or regulations to support the factual or legal positions it took in the
4 letter.

5 139. Although Dr. Ojemann closed the letter by saying that SCH "continues to want to
6 renew the Agreement with Periphery," it "consider[s] the outstanding issues resolved in the
7 current state." In short, in order for the parties to move forward on the new contract, Periphery
8 needed to accept the Hospital's positions on these issues. Put a different way, SCH was
9 conditioning the renewal on Periphery's acceptance of the Hospital's unlawful use of the
10 unlicensed Ph.D.s. (Despite the representations of Dr. Ojemann in July 2022, the Hospital never
11 provided Periphery with a draft of the renewal contract making clear that Periphery would not be
12 required to provide technologist services in cases in which the unlicensed U.W. Ph.D.'s would
13 provide oversight and supervision of IONM.)

14 140. The Hospital's factual and legal positions were unjustified and unlawful and
15 would have required Periphery to ratify conduct that constituted the unlicensed practice of
16 medicine, substandard and unsafe patient care, and violations of federal regulations pertaining to
17 Medicare and Medicaid.

18 141. Periphery could not lawfully accept these terms.

19 142. On September 9, 2022, Periphery provided a detailed rebuttal of the points made
20 by Dr. Ojemann on behalf of the Hospital, citing to relevant laws, regulations, and professional
21 guidelines. Periphery informed SCH that in light of the unjustified and unlawful positions it was
22 asserting and requiring Periphery to accept as a condition of renewing the contract, it was left
23 with no choice but to not move forward with the renewal.
24

1 143. On September 16, 2022, the term of the Agreement expired, and Periphery
2 stopped providing neuromonitoring services at SCH. (In fact, on or around September 14 or 15,
3 2022, SCH removed Periphery from a scheduled procedure, replacing it with Specialty Care, on
4 the ground that the Agreement had already expired.)

5 144. As a result of its reports regarding the lack of qualifications of the UW Ph.D.
6 providers, their failure to meet minimum standards of care, as well as its refusal to accept SCH's
7 unlawful positions on these matters, Periphery sustained damages that included the loss of
8 procedures to competitor Specialty Care until the end of the initial term of the Agreement; and
9 the loss of the contract renewal and future at SCH, which was devastating to a new healthcare
10 business trying to survive during COVID-19. Periphery also suffered significant financial losses
11 and asset depreciation on equipment and supplies it had purchased for use at SCH.

12 145. In total, Periphery provided coverage for 640 surgeries during the two-year term
13 of the "overflow" agreement. The revenue it earned for providing those services was in excess
14 of \$1,475,000.00.

15 146. Based on the last draft of the renewal contract, Periphery was projected to cover
16 more surgeries per year at a higher rate per surgery over the succeeding five years of the renewal
17 contract. Since the fee for those services would increase, Periphery's revenue for providing
18 these services was projected to be in excess of \$6,000,000.

19 147. IONM is a niche healthcare service, in which contract decisions are often based
20 on the recommendation of surgeons, who connect administrators with competent IONM
21 providers that they have previously worked with. Following the Hospital's denial of a renewal
22 contract to Periphery, Mr. Timm and Mr. Wiman learned that people connected with the
23 Hospital, including the UW Ph.D.'s, were stating that Periphery had abandoned SCH and lacked
24

1 integrity. These damaging statements made it all but impossible for Periphery to secure
2 subsequent contracts.

3 148. Due to a lack of business, Periphery was forced to let go employees and
4 contractors, and the company eventually seized being able to provide IONM services.

5 **COUNT I – BREACH OF CONTRACT**
6 **(Against Defendant SCH)**

7 149. Plaintiff restates and re-alleges the foregoing paragraphs as though fully set forth
8 herein.

9 150. On or about September 15, 2020, Periphery and Defendants entered into a
10 “Clinical Services Agreement for Surgical Neuromonitoring Services” (“the Agreement”).

11 151. The Agreement was a valid, legally enforceable contract.

12 152. Among other obligations, in cases in which Defendant SCH provided an
13 “Interpreting Practitioner” for procedures in which Periphery was providing the technologist,
14 Defendant agreed to provide Interpreting Practitioners who met the licensing and qualification
15 requirements of Section 2.1 of the Agreement and Exhibit A to the Agreement.

16 153. Those requirements included:

17 (i) valid and unrestricted licensure, accreditations, certifications, and clinical
18 privileges necessary to furnish the Services at Facilities; (ii) active enrollment and
19 eligibility with respect to all state and federal health care programs; and (iii)
20 demonstrated competency to provide the Services in a timely, safe, and effective
21 manner in accordance with applicable ethical and professional standards.

22 154. Additionally, Section 8.3 of the Agreement stated: “The parties intend this
23 Agreement to comply with all laws, regulations and requirements applicable to physicians,
24 hospitals, Medicare and Medicaid participants, and healthcare professionals in general.”

155. Defendant SCH failed to perform its obligations under the Agreement, including
by providing Interpreting Practitioners who were not licensed to provide such services under

1 state law; did not meet the eligibility requirements of all state and federal health care programs;
2 and did not have demonstrated competency to provide the services in a timely, safe, and effective
3 manner in accordance with applicable ethical and professional standards.

4 156. Periphery brought these failures to the attention of Defendant, but SCH did not
5 remediate or cure these issues.

6 157. As a result of Defendant's failure to perform its obligations under the Agreement,
7 it materially breached the Agreement.

8 158. As a result of Defendant's material breaches of the Agreement, Periphery lost the
9 opportunity to provide technologist services in certain cases until the end of the initial term of the
10 Agreement; was unable to use equipment and supplies it had purchased to provide those services;
11 and was denied the opportunity to renew the Agreement with SCH.

12 159. Defendant's breaches proximately caused Periphery to suffer economic and
13 consequential losses, justifying an award of monetary damages in an amount to be proven at trial
14 and other just relief, but no less than \$6 million.

15 160. Periphery seeks all relief that the court deems appropriate, including declaratory
16 relief, injunctive relief, and an award of damages against Defendant.

17 **COUNT II – BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**
18 **(Against Defendant SCH)**

19 161. Plaintiff restates and re-alleges the foregoing paragraphs as though fully set forth
20 herein.

21 162. Under Washington law, there is in every contract an implied duty of good faith
22 and fair dealing that requires the parties to cooperate with each other so that each may obtain the
23 full benefit of performance. The implied duty of good faith and fair dealing presumes honesty
24 and lawfulness of purpose.

1 163. A violation of a statutory duty related to a contract term constitutes a breach of
2 the implied duty of good faith and fair dealing.

3 164. Moreover, actions taken by one party that interfere with the other party's ability to
4 perform the contract breach the implied duty of good faith and fair dealing.

5 165. When a party has discretion over a future contract term, it has an implied duty of
6 good faith and fair dealing in setting and performing that contract term.

7 166. On September 15, 2020, Periphery and Defendant SCH entered into a "Clinical
8 Services Agreement for Surgical Neuromonitoring Services" ("the Agreement")

9 167. The Agreement was a valid, legally enforceable contract, and thus contained an
10 implied duty of good faith and fair dealing that required the parties to cooperate with each other
11 so that each could obtain the full benefit of performance.

12 168. Defendant breached the implied duty of good faith and fair dealing by, among
13 other ways, forcing Periphery to work with unlicensed oversight providers; assigning
14 technologist work that had formerly been performed by Periphery to another vendor who was
15 willing to work with unlicensed oversight providers; and conditioning a renewal of Periphery's
16 Agreement on its willingness to work with oversight providers who were unlicensed and lacked a
17 scope of practice under state law.

18 169. Additionally, although the Agreement provided Defendant with discretion as to
19 whether to renew the Agreement beyond its initial term, Defendant denied renewal on the basis
20 that Periphery would not agree to be subject to oversight by providers who were unlicensed,
21 lacked a scope of practice under state law, and/or were providing oversight services in violation
22 of state law. This also constitutes a breach of the implied duty of good faith and fair dealing.

1 170. Defendant's breaches of the implied duty of good faith and fair dealing
2 proximately caused Periphery to suffer economic and consequential losses, justifying an award
3 of monetary damages in an amount to be proven at trial and other just relief, but no less than \$6
4 million.

5 171. Periphery seeks all relief that the court deems appropriate, including declaratory
6 relief, injunctive relief, and an award of damages against Defendant.

7 **COUNT III – TORTIOUS INTERFERENCE WITH CONTRACT**
8 **(Against Defendants UWP, Esselman, and Kinney)**

9 172. Plaintiff restates and re-alleges the foregoing paragraphs as though fully set forth
10 herein.

11 173. On September 15, 2020, Periphery and Defendant SCH entered into a "Clinical
12 Services Agreement for Surgical Neuromonitoring Services" ("the Agreement")

13 174. The Agreement was a valid, legally enforceable contract.

14 175. Defendants UWP, Esselman and Kinney had knowledge of the Agreement.

15 176. Defendants UWP, Esselman and Kinney took actions to interfere with the
16 Agreement, including by failing to show up on time for scheduled procedures; failing to
17 continuously and directly supervise Periphery technologists, thus obstructing and imperiling
18 Periphery's own performance under the Agreement; misrepresenting and lying about the
19 qualifications of the UW Ph.D. oversight providers as a way of undermining Periphery's existing
20 position and relationship with the Hospital; and exerting their influence as affiliates of SCH to
21 undermine Periphery's existing position and relationship with the Hospital.

22 177. These actions were taken with the intent to cause SCH to breach and/or not to
23 renew the Agreement with Periphery, and with knowledge that interference with the Agreement
24 was substantially certain to result from these actions.

1 178. These actions involved conduct that was false and otherwise improper.

2 179. The Defendants took these actions in bad faith for an improper purpose, using
3 improper means. Among other acts, Defendants' actions violated relevant state laws governing
4 the practice of medicine and professional standards of patient care. Defendants also asserted that
5 they had a lawful right to provide oversight services using unlicensed Ph.D.s, which was an
6 unlawful position that they knew was unlawful.

7 180. The Defendants' acts of interference with the Agreement were the proximate
8 cause of frustration and aggravation in Periphery's performance of the Agreement; harassment
9 and hostility suffered by Mr. Wiman and Mr. Timm; and SCH's decision to breach the
10 Agreement by assigning technologist work that had formerly been performed by Periphery to
11 another vendor who was willing to work with unlicensed oversight providers (who itself was
12 already a contractor of Defendants).

13 181. Periphery has suffered economic and consequential losses because of Defendants'
14 interference with the Agreement, justifying an award of monetary damages in an amount to be
15 proven at trial and other just relief in excess of \$6 million.

16 182. Additionally, as a result of Defendants' actions, Mr. Timm and Mr. Wiman
17 suffered mental distress, discomfort, inconvenience, injury to reputation, and humiliation,
18 justifying an award of monetary damages in an amount to be proven at trial.

19 183. Plaintiffs seek all relief that the court deems appropriate, including declaratory
20 relief, injunctive relief, and an award of actual damages against Defendants.

21 **COUNT IV – TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIP OR**
22 **EXPECTANCY**
23 **(Against Defendants UWP, Esselman, and Kinney)**

1 184. Plaintiff restates and re-alleges the foregoing paragraphs as though fully set forth
2 herein.

3 185. Based on their negotiation and execution of an agreement for Periphery to provide
4 IONM services, Periphery and SCH had a valid business relationship.

5 186. Based on the negotiation and advanced drafts they had exchanged regarding an
6 upcoming five-year renewal of the agreement for Periphery to provide IONM services, Periphery
7 had a valid business expectancy in the renewal.

8 187. Defendants UWP, Esselman and Kinney had knowledge of this business
9 relationship and this business expectancy.

10 188. Defendants UWP, Esselman and Kinney took actions to interfere with this
11 business relationship and business expectancy, including by, among other ways, exerting their
12 influence as affiliates of SCH to undermine Periphery's existing position and relationship with
13 the Hospital; and misrepresenting and lying about the qualifications of the UW Ph.D. oversight
14 providers as a way of causing SCH to deny the renewal to Periphery.

15 189. These actions were taken with the intent to cause SCH to end the business
16 relationship and the business expectancy by not renewing the Agreement with Periphery, and
17 with knowledge that interference with the relationship and expectancy was substantially certain
18 to result from these actions.

19 190. These actions involved conduct that was false and otherwise improper.

20 191. The Defendants took these actions in bad faith for an improper purpose, using
21 improper means. Among other acts, Defendants asserted that they had a lawful right to provide
22 oversight services using unlicensed Ph.D.'s, which was an unlawful position that they knew was
23 unlawful, and which they intended for SCH to adopt as its own position.

192. The Defendants' acts of interference with the Agreement were the proximate cause of SCH's decision to deny Periphery the five-year renewal contract.

193. Periphery has suffered economic and consequential losses because of Defendants' interference with the Agreement, justifying an award of monetary damages in an amount to be proven at trial and other just relief, but not less than \$6 million.

194. Additionally, as a result of Defendants' actions, Mr. Timm and Mr. Wiman suffered mental distress, discomfort, inconvenience, injury to reputation, and humiliation, justifying an award of monetary damages in an amount to be proven at trial.

195. Plaintiffs seek all relief that the court deems appropriate, including declaratory relief, injunctive relief, and an award of actual damages against Defendants.

**COUNT V – RETALIATION IN VIOLATION OF THE WASHINGTON HEALTHCARE
WHISTLEBLOWER STATUTE (REV. CODE WASH. § 43.70.075)
(Against All Defendants)**

196. Plaintiff restates and re-alleges the foregoing paragraphs as though fully set forth herein.

197. Section 43.70.075(1)(d) of the Revised Code of Washington provides:

A whistleblower who is not an employee and who as a result of being a whistleblower has been subjected to reprisal or retaliatory action may initiate a civil action in a court of competent jurisdiction to either enjoin further violations, recover actual damages sustained by the whistleblower, or both, and recover the cost of the suit including reasonable attorneys' fees.

Rev. Code Wash. § 43.70.075(1)(d).

198. The Statute defines "whistleblower" to mean "a consumer, employee, or health care professional . . . who in good faith reports alleged quality of care concerns to the department of health or initiates, participates, or cooperates in any investigation or administrative proceeding under this section. Rev. Code Wash. § 43.70.075(3)(d).

1 199. Mr. Timm and Mr. Wiman are “health care professionals” under Section
2 43.70.075(3)(d).

3 200. Mr. Timm and Mr. Wiman are whistleblowers under Section 43.70.075(1)(d)
4 because they made good faith reports of alleged quality of care concerns.

5 201. Under Rev. Code Wash. § 70.56.020(2), when a medical facility confirms that an
6 adverse event has occurred, it shall notify the Department of Health of the event within forty-
7 eight hours and shall submit a report of the event within forty-five days. The report must include
8 a “root cause analysis” of the event and describe any corrective action that will be implemented
9 or provide reasons why corrective action was not taken. Rev. Code Wash. § 70.56.020(4).

10 202. An adverse event includes “[a]ny instance of care ordered by or provided by
11 someone impersonating a physician, nurse, pharmacist, or other licensed health care provider.”
12 Wash. Admin Code § 246-302-030(7)(a).

13 203. Mr. Timm and Mr. Wiman repeatedly made reports to SCH regarding the
14 Hospital’s use of UW Ph.D. providers who were engaged in the practice of medicine but were
15 unlicensed and lacked a scope of practice under state law, and thus were “impersonating” a
16 physician or other licensed health care provider.

17 204. Thus, for purposes of the statute, Mr. Timm and Mr. Wiman were reporting
18 “adverse events” to the Hospital, which had a mandatory duty to report such events to the
19 Department of Health. As such, Mr. Timm and Mr. Wiman’s reports were reports made to the
20 “Department of Health” for purposes of Section 43.70.075(3)(d).

21 205. A hospital also has a duty to report to the Department of Health if a licensed
22 practitioner has committed unprofessional conduct as defined in Section 18.130.180. Rev. Code
23 Wash. § 18.130.080(1)(b)(i); Rev. Code Wash. § 70.41.210. Under Rev. Code Wash. §
24

1 18.130.180(10), unprofessional conduct includes “[a]iding or abetting an unlicensed person to
2 practice when a license is required.”

3 206. Mr. Timm and Mr. Wiman repeatedly made reports to SCH regarding the aiding
4 and abetting, and support of licensed persons (including Drs. Randall Bly, John Dahl, Jonathan
5 Perkins, Samuel Browd, and Jeffrey Ojemann) in using UW Ph.D. providers who were engaged
6 in the practice of medicine but were unlicensed and lacked a scope of practice under state law.

7 207. Thus, for purposes of the statute, Mr. Timm and Mr. Wiman were reporting
8 unprofessional conduct of licensed persons to the Hospital, which had a mandatory duty to report
9 such conduct to the Department of Health. As such, Mr. Timm and Mr. Wiman’s reports were
10 reports made to the “Department of Health” for purposes of Section 43.70.075(3)(d).

11 208. Additionally, a hospital is required to establish a quality improvement program
12 under state law. Rev. Code Wash. § 70.41.200(1). A quality improvement program must have
13 “[p]olicies to ensure compliance with the reporting requirements of this section,” including
14 Section 70.41.210 regarding the reporting of unprofessional conduct to the Department of
15 Health. Rev. Code Wash. § 70.41.200.

16 209. Mr. Timm and Mr. Wiman made a number of their reports through the Hospital’s
17 quality improvement program, and as such, their reports were made to the “Department of
18 Health” for purposes of Section 43.70.075(3)(d).

19 210. Mr. Timm and Mr. Wiman made their reports of quality-of-care issues in good
20 faith.

21 211. Defendants had knowledge and were aware that Mr. Timm and Mr. Wiman had
22 made these reports.

1 212. Defendants SCH, CUMG, Ojemann, Browd, and Perkins took reprisals and
2 retaliatory actions against Mr. Timm and Mr. Wiman, including, among other ways, by harassing
3 Mr. Timm and Mr. Wiman; replacing them as providers of IONM services in cases involving the
4 UW Ph.D.s; making the renewal of their company's contract contingent on accepting the
5 unlicensed practice of medicine, as well as dangerous behaviors and misconduct by the UW
6 Ph.D.s; and denying them a renewal contract to provide IONM services at the Hospital.

7 213. Defendants UWP, Esselman, and Kinney took reprisals and retaliatory actions
8 against Mr. Timm and Mr. Wiman, including by failing to show up on time for scheduled
9 procedures; failing to continuously and directly supervise Periphery technologists, thus
10 obstructing and imperiling Periphery's own performance under the Agreement; harassing them;
11 misrepresenting and lying about qualifications of the UW Ph.D. oversight providers as a way of
12 undermining Periphery's existing contract and relationship with the Hospital; and exerting their
13 influence as affiliates of SCH to undermine Periphery's existing position and to induce SCH to
14 deny a contract renewal to Periphery.

15 214. Defendants took these reprisals and retaliatory actions because Mr. Timm and Mr.
16 Wiman were whistleblowers and engaged in actions that made them whistleblowers.

17 215. By these actions, Defendants violated Rev. Code Wash. § 43.70.075(1)(d).

18 216. As a result of Defendants' unlawful actions against Mr. Timm and Mr. Wiman,
19 Plaintiffs (including Periphery) have suffered economic and consequential losses, justifying an
20 award of monetary damages in an amount to be proven at trial and other just relief, but no less
21 than \$6 million.

217. Additionally, as a result of Defendants' unlawful actions against Mr. Timm and Mr. Wiman, they have suffered emotional anguish and distress, as well as damage to their reputations, justifying an award of monetary damages to be proven at trial.

218. As authorized by Rev. Code. Wash. § 43.70.075(1)(d), Plaintiffs seek all such relief as the court deems appropriate, including injunctive relief, an award of actual damages against Defendant, and recovery of their attorneys' fees and litigation costs in this matter.

**COUNT VI – RETALIATION IN VIOLATION OF THE FALSE CLAIMS ACT (31
U.S.C. § 3730(h))
(Against Defendants SCH, CUMG, and UWP)**

219. Plaintiffs restate and re-allege the foregoing paragraphs as though fully set forth herein.

220. The federal False Claims Act ("FCA") provides that a contractor "shall be entitled to all relief necessary to make" the contractor whole if the contractor is discriminated against because of lawful acts done by the contractor "in furtherance of an action" under the FCA or "other efforts to stop 1 or more violations" of the FCA. *See* 31 U.S.C. § 3730(h)(1).

221. A plaintiff engages in "protected activity" under the FCA by taking lawful actions "in furtherance of" a qui tam under the False Claims Act or by making "other efforts to stop 1 or more violations of this subchapter."

222. SCH was a "participating" hospital under Medicare since it treated patients qualifying as disabled under the federal healthcare system. The UW Ph.D.s were providing services at other participating hospitals, including the University of Washington Medical Center and Harborview. SCH, as well as the University of Washington Medical Center and Harborview, did a significant amount of billing to Medicare.

1 223. Because the UW Ph.D.'s were unlicensed and otherwise lacked a scope of
2 practice under state law, their services were not eligible for reimbursement under the
3 requirements of the Centers for Medicare and Medicaid Services ("CMS"). *See* 42 C.F.R. §
4 410.32; *see also* 42 C.F.R. § 482.11(c); LCD L14726 (Sensory Evoked Potentials and Intraop
5 Neurophysiology Monitoring).

6 224. Mr. Timm and Mr. Wiman attempted to stop these violations of the FCA by
7 reporting their concerns that the oversight services the UW Ph.D.'s were providing were not
8 eligible for reimbursement under Medicare because the UW Ph.D.'s were not licensed under
9 state law and lacked a scope of practice, and because the UW Ph.D.'s were not meeting CMS
10 guidelines for billing, including because they were failing to provide "continuous oversight"
11 during procedures.

12 225. Given their years of experience performing IONM technologist services and their
13 familiarity with Medicare laws, regulations, and guidelines, Mr. Timm and Mr. Wiman believed
14 that Defendants were violating the FCA by attempting to obtain reimbursement for IONM
15 supervision and interpretation services performed by providers who were not licensed to provide
16 those services, which (as a result) were not eligible for reimbursement.

17 226. Mr. Timm and Mr. Wiman's belief that Defendants were violating the FCA was
18 objectively reasonable.

19 227. These actions by Mr. Timm and Mr. Wiman constituted protected activity under
20 the FCA.

21 228. Defendants had knowledge and were aware that Mr. Timm and Mr. Wiman
22 engaged in protected activity under the FCA.

1 229. Defendants SCH and CUMG retaliated and discriminated against Mr. Timm, Mr.
2 Wiman, and Periphery (their company) by, among other ways, harassing them; replacing them as
3 a provider of IONM services in cases involving the UW Ph.D.s; and refusing to renew the
4 contract with Periphery to provide IONM technologist services.

5 230. Defendant UWP retaliated and discriminated against Mr. Timm, Mr. Wiman, and
6 Periphery (their company) by, among other ways, misrepresenting and lying about qualifications
7 of the UW Ph.D. oversight providers as a way of undermining Periphery's existing contract and
8 relationship with the Hospital; and exerting its influence as an affiliate of SCH to undermine
9 Periphery's existing position and to induce SCH to deny a contract renewal to Periphery.

10 231. Defendants took these actions of retaliation and discrimination because Mr. Timm
11 and Mr. Wiman engaged in protected activity.

12 232. As a result of Defendants' unlawful actions against Mr. Timm and Mr. Wiman,
13 Plaintiffs (including Periphery) have suffered economic and consequential losses, justifying an
14 award of monetary damages in an amount to be proven at trial and other just relief, but no less
15 than \$6 million.

16 233. Additionally, as a result of Defendant's unlawful actions against Mr. Timm and
17 Mr. Wiman, have suffered emotional anguish and distress, as well as damage to their reputations,
18 justifying an award of monetary damages to be proven at trial.

19 234. As authorized by 31 U.S.C. § 3730(h), Plaintiffs seek all relief necessary to make
20 them whole, including reinstatement; damages as set forth in the statute; two times the amount of
21 economic damages (backpay) awarded under the statute; interest; compensation for special
22 damages; reimbursement of attorneys' fees, and costs associated with pursuing this matter; and
23 all other relief that the court deems appropriate.
24

**COUNT VII – RETALIATION IN VIOLATION OF THE WASHINGTON MEDICAID
FRAUD FALSE CLAIMS ACT (REV. CODE. WASH. § 74.66.090(1))
(Against Defendants SCH, CUMG, and UWP)**

235. Plaintiff restates and re-alleges the foregoing paragraphs as though fully set forth herein.

236. The Washington Medicaid Fraud False Claims Act (“WA FCA”) provides that a contractor “is entitled to all relief necessary to make” the contractor whole if the contractor is discriminated against because of lawful acts done by the contractor “in furtherance of an action” under the WA FCA or “other efforts to stop one or more violations” of the WA FCA. *See* Rev. Code Wash. § 74.66.090(1).

237. A plaintiff engages in “protected activity” under the WA FCA by taking lawful actions “in furtherance of” an action under the WA FCA or by making “other efforts to stop one or more violations” of the WA FCA.

238. SCH was a “participating” hospital under Medicaid (known as “Apple Health,” in the State of Washington). The UW Ph.D.’s were providing services at other participating hospitals, including the University of Washington Medical Center and Harborview. SCH, as well as the University of Washington Medical Center and Harborview, did a significant amount of billing to Medicaid.

239. Because the UW Ph.D.’s were unlicensed and otherwise lacked a scope of practice under state law, their services were not eligible for reimbursement under the requirements of the Centers for Medicare and Medicaid Services (“CMS”). *See* 42 C.F.R. § 410.32; *see also* 42 C.F.R. § 482.11(c); LCD L14726 (Sensory Evoked Potentials and Intraop Neurophysiology Monitoring).

1 240. Mr. Timm and Mr. Wiman attempted to stop these violations of the WA FCA by
2 reporting their concerns that the oversight services the UW Ph.D.'s were providing were not
3 eligible for reimbursement under Medicaid because the UW Ph.D.'s were not licensed under
4 state law and lacked a scope of practice, and because the UW Ph.D.'s were not meeting CMS
5 guidelines for billing, including because they were failing to provide "continuous oversight"
6 during procedures.

7 241. Given their years of experience performing IONM technologist services and their
8 familiarity with Medicaid laws, regulations, and guidelines, Mr. Timm and Mr. Wiman believed
9 that Defendants were violating the WA FCA by attempting to obtain reimbursement for IONM
10 supervision and interpretation services performed by providers who were not licensed to provide
11 those services, which (as a result) were not eligible for reimbursement.

12 242. Mr. Timm and Mr. Wiman's beliefs that Defendants were violating the WA FCA
13 were objectively reasonable.

14 243. These actions by Mr. Timm and Mr. Wiman constituted protected activity under
15 the WA FCA.

16 244. Defendants had knowledge and were aware that Mr. Timm and Mr. Wiman
17 engaged in protected activity under the WA FCA.

18 245. Defendants SCH and CUMG retaliated and discriminated against Mr. Timm, Mr.
19 Wiman, and Periphery (their company) by, among other ways, harassing them; replacing them as
20 a provider of IONM services in cases involving the UW Ph.D.'s; and refusing to renew the
21 contract with Periphery to provide IONM technologist services.

22 246. Defendant UWP retaliated and discriminated against Mr. Timm, Mr. Wiman, and
23 Periphery (their company) by, among other ways, misrepresenting and lying about qualifications
24

1 of the UW Ph.D. oversight providers as a way of undermining Periphery's existing contract and
2 relationship with the Hospital; and exerting its influence as an affiliate of SCH to undermine
3 Periphery's existing position and to induce SCH to deny a contract renewal to Periphery.

4 247. Defendants took these actions of retaliation and discrimination because Mr. Timm
5 and Mr. Wiman engaged in protected activity.

6 248. Defendants' actions were taken with evil motive, actual malice, intent to injure,
7 deliberate indifference and/or willful disregard for the rights of Plaintiffs, and/or with reckless
8 indifference to those rights.

9 249. As a result of Defendants' unlawful actions against Mr. Timm and Mr. Wiman,
10 Plaintiffs (including Periphery) have suffered economic and consequential losses, justifying an
11 award of monetary damages in an amount to be proven at trial and other just relief, but no less
12 than \$6 million.

13 250. Additionally, as a result of Defendants' unlawful actions against Mr. Timm and
14 Mr. Wiman, they have suffered emotional anguish and distress, as well as damage to their
15 reputations, justifying an award of monetary damages to be proven at trial.

16 251. As authorized by Rev. Code Wash. § 74.66.090(1), Plaintiffs seek all relief
17 necessary to make them whole, including reinstatement; damages as set forth in the statute; two
18 times the amount of economic damages (backpay) awarded under the statute; interest;
19 compensation for special damages; reimbursement of attorneys' fees, and costs associated with
20 pursuing this matter; and all other relief that the court deems appropriate.

21 252. Additionally, pursuant to Section 74.66.090(3), Plaintiff seeks all relief "available
22 under [Rev. Code Wash.] 49.60.030(2)," including but not limited to economic damages,
23
24

1 compensatory damages, and punitive damages authorized directly or by reference in that
2 provision.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, in consideration of the foregoing, Plaintiffs respectfully request that this
5 Court enter judgment in Plaintiffs' favor and grant the following relief:

- 6 a) Declare that Defendant SCH breached the Agreement with Periphery by using UW
7 Ph.D. providers who lacked licenses and a scope of practice under state law to oversee
8 IONM services;
- 9 b) Declare that Defendant SCH breached the implied covenant of good faith and fair
10 dealing with Periphery;
- 11 c) Declare that Defendants UWP, Esselman, and Kinney tortiously interfered with the
12 Agreement between SCH and Periphery;
- 13 d) Declare that Defendants UWP, Esselman, and Kinney tortiously interfered with the
14 business relationship between SCH and Periphery, as well as the business expectancy
15 that Periphery had in a renewal of its contract with SCH;
- 16 e) Declare that all Defendants retaliated against Plaintiffs in violation of the Washington
17 Healthcare Whistleblower Statute;
- 18 f) Declare that Defendants SCH, CUMG, and UWP retaliated against Plaintiffs in
19 violation of the False Claims Act and the Washington State Medicaid Fraud False
20 Claims Act;
- 21 g) Award Plaintiffs economic damages, including consequential damages, in an amount
22 to be proven at trial;
- 23 h) Award Plaintiffs compensatory damages in an amount to be proven at trial;
- 24

- 1 i) Award Plaintiffs punitive damages in an amount to be proven at trial;
- 2 j) Award pre-judgment interest and post-judgment interest at the applicable rates, court
- 3 costs, and attorneys' fees, where applicable; and
- 4 k) Award such other and further relief as this Court may deem just and proper.

5

6 DATED this 20th day of September, 2024.

7 /s/ Brad J. Moore

8 Brad J. Moore WSBA #21802

9 STRITMATTER KESSLER KOEHLER

10 MOORE

11 3600 15th Avenue West, #300

12 Seattle, WA 98119

13 Tel: 206.448.1777

14 Fax: 206.728.2131

15 brad@stritmatter.com

16

17

18

19

20

21

22

23

24

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Donald Timm; Reed Wiman; Periphery Neurophysiology,

(b) County of Residence of First Listed Plaintiff Skagit County, WA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See attachment

DEFENDANTS

Seattle Children's Hospital
(additional defendants on attachment)County of Residence of First Listed Defendant King County, WA
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

See attachment

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability LABOR <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input checked="" type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
31 U.S.C. § 3730(h)

Brief description of cause:
Claim alleging retaliation in violation of the Federal False Claims Act and supplemental state law claims.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

Sep 30, 2024

SIGNATURE OF ATTORNEY OF RECORD

s/ Jeffrey B. Coopersmith

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

ATTACHMENT
CIVIL CASE COVER SHEET

I. (c) ATTORNEYS FOR PLAINTIFFS

Brad J. Moore, WSBA No. 21802
Andrew Ackley, WSBA No. 41752
STRITMATTER KESSLER KOEHLER MOORE
3600 15th Avenue West, Suite 300
Seattle, WA 98119
Ph: (206) 448-1777
brad@stritmatter.com
andrew@stritmatter.com

Eric L. Siegel, Admitted PHV
James E. Miller, Admitted PHV
ERIC SIEGEL LAW, PLLC
888 17th Street, N.W., Suite 1200
Washington, DC 20006
Ph: (202) 946-2962
esiegel@ericsiegellaw.com
jmiller@ericsiegellaw.com

I. (a) DEFENDANTS

The Association of CHRMC and University Physicians (d/b/a Children's University
Medical Group);
Jeffrey G. Ojemann, M.D.;
Samuel Browd, M.D.;
Jonathan Perkins, D.O.;
The Association of University Physicians (d/b/a UW Physicians);
Peter C. Esselman, M.D.;
Gregory Kinney, PH.D.

I. (c) ATTORNEYS FOR DEFENDANTS

Attorneys for Defendants Seattle Children's Hospital and Jeffrey G. Ojemann, M.D.
Jeffrey B. Coopersmith, WSBA No. 30954
Kevin C. Baumgardner, WSBA No. 14263
Maia R. Robbins, WSBA No. 54451
Mark T. Rutherford, WSBA No. 57519
CORR CRONIN LLP
1015 Second Avenue, Floor 10
Seattle, Washington 98104-1001
Ph: (206) 625-8600
jcoopersmith@corrchronin.com
kbaumgardner@corrchronin.com
mrobbins@corrchronin.com
mrutherford@corrchronin.com

Attorneys for Defendants CUMG, Browd, Perkins, UWP, Esseman, and Kinney

Bret S. Simmons, WSBA No. 25558

Melissa Nelson, WSBA No. 17439

SIMMONS SWEENEY FREIMUND SMITH TARDIF PLLC

1223 Commercial Street

Bellingham, WA 98225

Ph: (360) 752-2000

bret@ssslawgroup.com

melissa@ssslawgroup.com

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DONALD TIMM, an individual; REED
WIMAN, an individual; and PERIPHERY
NEUROPHYSIOLOGY, a foreign limited
liability company,

Plaintiffs,

v.

SEATTLE CHILDREN'S HOSPITAL, a
Washington non-profit corporation; THE
ASSOCIATION OF CHRM AND
UNIVERSITY PHYSICIANS (d/b/a
CHILDREN'S UNIVERSITY MEDICAL
GROUP), a Washington non-profit
Corporation; JEFFREY G. OJEMANN, M.D.,
an individual; SAMUEL BROWD, M.D., an
individual; JONATHAN PERKINS, D.O., an
individual; THE ASSOCIATION OF
UNIVERSITY PHYSICIANS (d/b/a UW
PHYSICIANS), a Washington non-profit
corporation; PETER C. ESSELMAN, M.D.;
and GREGORY KINNEY, PH.D., an
individual

Defendants.

No.

DECLARATION OF JEFFREY B.
COOPERSMITH RE: SERVICE OF
NOTICE OF REMOVAL

I, Jeffrey B. Coopersmith, declare and state as follows:

1. I am a partner at Corr Cronin LLP and a member of the Washington State bar. I am
counsel for Defendants Seattle Children's Hospital and Jeffrey G. Ojemann, M.D.

DECLARATION OF JEFFREY B. COOPERSMITH - 1
[No. _____]

CORR CRONIN LLP
1015 Second Avenue, Floor 10
Seattle, Washington 98104-1001
Tel (206) 625-8600
Fax (206) 625-0900

1 (“SCH/Ojemann”) the above-captioned matter. I am over eighteen years of age, competent to
 2 testify, and submit this declaration based upon my personal knowledge.

3 2. I caused to be served a true and correct copy of the Notice of Removal to Federal
 4 Court on the following counsel via email:

5 Attorneys for Plaintiffs:

6 Brad J. Moore, WSBA No. 21802
 7 Andrew Ackley, WSBA No. 41752
 8 STRITMATTER KESSLER KOEHLER
 9 MOORE
 3600 15th Avenue West, Suite 300
 10 Seattle, WA 98119
 Ph: (206) 448-1777
 11 brad@stritmatter.com
 andrew@stritmatter.com

Eric L. Siegel
 James E. Miller
 ERIC SIEGEL LAW, PLLC
 888 17th Street, N.W., Suite 1200
 Washington, DC 20006
 Ph: (202) 946-2962
 esiegel@ericsiegellaw.com
 jmiller@ericsiegellaw.com

12 Attorneys for Defendants CUMG, Browd, Perkins, UWP, Esseman, and Kinney:

13 Bret S. Simmons, WSBA No. 25558
 14 Melissa Nelson, WSBA No. 17439
 15 SIMMONS SWEENEY FREIMUND
 16 SMITH TARDIF PLLC
 1223 Commercial Street
 17 Bellingham, WA 98225
 Ph: (360) 752-2000
 18 bret@ssslawgroup.com
 melissa@ssslawgroup.com

19 I declare under penalty of perjury under the laws of the United States of America and the
 20 State of Washington that the foregoing statements are true and correct.

21 DATED this 30th day of September, 2024, at Seattle, Washington

22 s/ Jeffrey B. Coopersmith
 23 Jeffrey B. Coopersmith
 24
 25

SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR
THE COUNTY OF KING

TIMM ET AL

vs.

SEATTLE CHILDRENS HOSPITAL
ET AL

Case No.: 24-2-19606-4 SEA

CERTIFICATE OF E-SERVICE

(AFSRES)

I, Jeffrey Coopersmith, certify that I initiated electronic service of the following document(s) on the parties listed below who have consented to accept electronic service via the King County eFiling Application. Service was initiated on October 01, 2024 at 11:46:58 AM.

Document(s):

1. NOTICE DEFENDANTS SCH AND OJEMANN RE NOTICE OF REMOVAL

Parties:

1. Andrew Ackley, Attorney for Petitioner/Plaintiff
email: Andrew@stritmatter.com
2. Bret Simmons, Attorney for Respondent/Defendant
email: bret@ssslawgroup.com
3. Jeffrey Coopersmith, Attorney for Respondent/Defendant
email: jcoopersmith@corrchronin.com
4. Maia Robbins, Attorney for Respondent/Defendant
email: mrobbins@corrchronin.com
5. Melissa Nelson, Attorney for Respondent/Defendant
email: melissa@ssslawgroup.com
6. Mark Rutherford, Attorney for Respondent/Defendant
email: mrutherford@corrchronin.com

Executed this 1st day of October, 2024.

s/ Jeffrey Coopersmith
WSBA #: 30954
1015 Second Avenue
Floor 10
Seattle, WA 98104

206-625-8600
jcoopersmith@corrcronin.com